APPENDIX
VOLUME I

Supreme Court of the United States

OCTOBER TERM, 1967

No. 800

WORLD AIRWAYS, INC., ET AL., *Petitioners,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 946

CIVIL AERONAUTICS BOARD, *Petitioner,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 969

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner,*

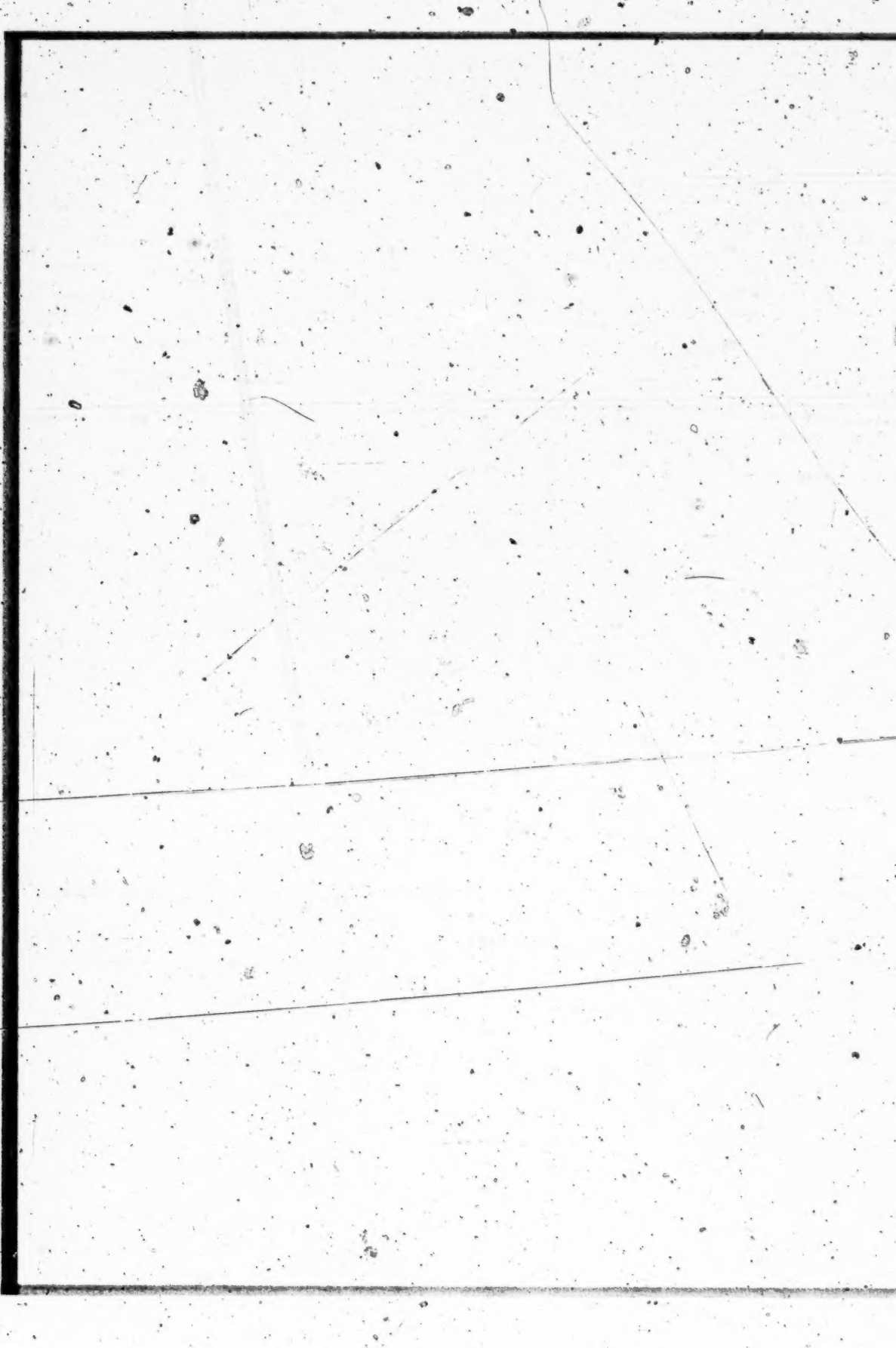
v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petition For Certiorari Filed In No. 800, November 7, 1967
Petition For Certiorari Filed In No. 946, December 22, 1967
Petition For Certiorari Filed In No. 969, December 28, 1967

Certiorari granted and consolidated January 29, 1968



INDEX TO APPENDIX

Pages in Certified Records		Appendix Pages
	VOLUME I	
	Relevant Docket Entries	Ia
Docket No. 13795		
115	Notice by CAB that it will proceed with processing of applications for supplemental air service, July 12, 1963	1a
304	Order No. 20573	2a
633	Report of Prehearing Conference, June 2, 1964	17a
4108	Holiday Airways, Inc., HOL-T-4 Testimony of Richard D. Neumann	20a
	World Airways, Inc.:	
6065	World—300	21a
6229	World Form D	23a
6414	World W-5	24a
6622	Bureau of Economic Regulation, BER Index	27a
7174	Joint Intervenors, JI-8	29a
7386	Joint Exhibits of American Flyers Airline, et al., J-211	30a
	Joint Intervenors:	
7788	JI-1080	31a
8084	JI-B	37a
8847	Joint Intervenors' brief to the Examiner March 19, 1965	39a

Pages in Certified Records		Appendix Pages
Docket No. 13795 (Continued)		
10010	Recommended Decision of Examiner, August 27, 1965	44a
10269	Exceptions of Joint Intervenors, September 7, 1965	312a
10878	Brief of Joint Intervenors, September 27, 1965	317a
11275	Answer of Joint Intervenors, September 27, 1965	323a
11359	Oral Argument, October 13 and 14, 1965	325a
11734	Order No. E-23350	332a
11982	Petition for Reconsideration by Joint Intervenors, April 4, 1966	485a
12008	Answer of Joint Intervenors, April 11, 1966	500a
12044	Motion of Joint Intervenors, April 11, 1966	508a
12093	Order No. E-23600	517a
	VOLUME II	
12129	Order No. E-24237	543a
12171	Order No. E-24238	596a
12181	Order No. E-24239	608a
12322	Order No. E-24431	610a

Pages in Certified Records		Appendix Pages
Docket No. 13795 (Continued)		
12324	ER-478, November 22, 1966	613a
12327	ER-479, November 22, 1966	615a
Docket No. 11908		
12335	Order No. E-16023	617a
12348	Notice of Proposed Rulemaking, November 14, 1960 (EDR-21)	619a
12520	Order No. E-17190	636a
12703	Order No. E-17607	644a
	Transcript of Transatlantic Charter Investigation:	
15082	Cross examination of Phillip R. Capellupo (PAA) by Charles A. Hobbs of the American Society of Travel Agents, Inc.	648a
15338	Kenneth L. Briggs (TWA)	651a
16308	United States Overseas Airways, Inc., USOA-106	652a
17575	Trans World Airlines, Inc., TWA 13	653a
19438	Examiner's Decision—Transatlantic Charter Investigation	654a
19553	Appendix B to Examiner's Decision—Transatlantic Charter Investigation	755a
20642	Orders Nos. E-20530 and E-20531 and Supplemental Orders Nos. E-20530 and E-20531	777a

Pages in Certified Records		Appendix Pages
Docket No. 11908 (Continued)		
20868	Petition to Intervene by American Airlines and Others, March 23, 1964	884a
21179	Order No. E-20650	889a
21199	Order No. E-20776	892a
21909	Recommended Decision of Examiner, October 8, 1964	927a
22609	Order No. E-21966	944a
22954	Order No. E-22255	954a
	World Airways, Inc.:	
27329	World R-1	956a
27252	World 403	957a
27352	World R-7	959a
28299	Order No. E-28686	960a
28389	Pan American Airways' Brief, October 7, 1965	963a
28442	Trans World Airlines' Brief, October 8, 1965	968a
28743	Recommended Decision of Examiner, December 22, 1965	976a
29582	Order No. E-24240	1060a
29611	Order No. E-24241	1089a
29618	Order No. E-24242	1097a

INDEX

	Appendix Page
United States Court of Appeals for the Second Circuit	
Opinion, July 20, 1967	1119a
Judgment, July 22, 1967	1144a
Order on Rehearing, September 29, 1967	1146a
Order Denying Petition for Rehearing En Banc, September 29, 1967	1148a
Order Granting Stay of Issuance of Mandate Under Rule 28(c), October 13, 1967	1150a

RELEVANT DOCKET ENTRIES

I. At Civil Aeronautics Board

A. *Transatlantic Charter Investigation,* Docket 11908 et al.

1. Order of Investigation and Consolidation, E-16023, dated November 14, 1960.
2. Supplemental Order of Investigation and Consolidation, E-17190, dated July 8, 1961.
3. Order No. E-17607, dated October 18, 1961.
4. Recommended Decision of Examiner, dated September 21, 1962.
5. Orders Nos. E-20530 and E-20531, dated October 8, 1963 and Supplemental Orders Nos. E-20530 and E-20531, dated March 3, 1964.
6. Order No. E-20776, dated April 30, 1964.

B. *Supplemental Air Service Proceeding,* Docket 13795 et al.

1. Order on Procedure, E-20573, March 13, 1964.
2. Recommended Decision of Examiner (covering domestic, overseas and foreign issues), August 27, 1965.
3. Opinion (covering domestic issues only), E-23350, March 11, 1966.
4. Supplemental Opinion and Order on Reconsideration (covering domestic issues only), E-23600, April 29, 1966.
5. Opinion (covering overseas and foreign issues), E-24237, approved by the President, September 27, 1966.
6. Order (adopting amendments to Parts 208 and 378 of the Board's Regulations), E-24238, effective November 26, 1966.

7. Order Denying Reconsideration (covering overseas and foreign issues), E-24431, November 22, 1966.

8. Reg. No. ER-478, dated November 22, 1966.

9. Reg. No. ER-479, dated November 22, 1966.

C. *Reopened Transatlantic Charter Investigation,* Docket 11908 et al.

1. Order No. E-20776, dated April 30, 1964.

2. Recommended Decision of Examiner, dated October 8, 1964.

3. Order (reopening Investigation for additional applicants), E-21966, March 30, 1965.

4. Order (adding All-Expense Tour issue), E-22686, September 23, 1965.

5. Recommended Decision of Examiner, December 22, 1965.

6. Opinion (All-Expense Tour Phase, amending authority of Capitol and Saturn), E-24240, approved by the President, September 27, 1966.

7. Opinion (adopting amendments to Parts 295 and 378 of the Board's Regulations), E-24241, effective November 26, 1966.

8. Opinion (issuing certificates to four additional carriers), E-24242, approved by the President, September 27, 1966.

II. At the United States Court of Appeals for the Second Circuit, Nos. 30947-8.

1. Petition for Review, November 25, 1966.

2. Argument Heard, June 15, 1967.

3. Judgment Remanded, July 20, 1967.

4. Filed Judgment, July 20, 1967.

5. Petitions for Rehearing and Rehearing en banc, August 4, 1967.

6. Petitions for Rehearing Denied, September 29, 1967.
7. Filed Orders Denying Petitions for Rehearing, September 29, 1967.
8. Petitions for Rehearing en banc Denied, per curiam, September 29, 1967.
9. Filed Orders Denying Petition for Rehearing en banc, September 29, 1967.
10. Filed Motions to Stay Issuance of Mandate, October 4, 1967.
11. Filed Order Granting Stay of Issuance of Mandate under Rule 28(c), October 13, 1967.
12. Filed Notice of Filing of Petition of Writ of Certiorari (World Airways, et al.), November 11, 1967.
13. Filed Notice of Filing of Petition for Writ of Certiorari (CAB), December 26, 1967.
14. Filed Notice of Filing of Petition for Writ of Certiorari (American Society of Travel Agents), December 29, 1967.
15. Filed Certified Copy of Order of Supreme Court Granting Petition for Writ of Certiorari (World Airways et al., CAB, American Society of Travel Agents), February 6, 1968.

(115, 117)

115

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE

Docket 13795 *et al.*

NOTICE

Notice is hereby given that the Civil Aeronautics Board has decided to move forward with the processing of the applications listed below which seek certificates of public convenience and necessity authorizing supplemental air transportation under section 401(d)(3) of the Federal Aviation Act of 1958, as amended:

* * * * * *

117

In order to facilitate and expedite the Board's determination of the scope of the proceeding, the issues therein, and the manner in which the proceeding will be processed, parties are instructed to submit on or before August 5, 1963, written expressions of their views on these questions.

* * * * *

(304)

304

Order No. E-20573

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served MAR 13 1964

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 13th day of March, 1964

SUPPLEMENTAL AIR SERVICE

Docket 13795 *et al.*

ORDER ON PROCEDURE

By Notice of July 12, 1963, from the Chief Examiner, the Board announced its intention to move forward with the processing of some 55 applications listed in the Notice which appeared to seek certificates of public convenience and necessity authorizing supplemental air transportation under section 401(d)(3) of the Act. All interested persons were offered an opportunity to express their views on such matters as the scope of the proceeding, the issues therein, and the manner in which the proceeding should be processed, and to comment on the suggestions made by others.

Numerous motions, suggestions, and comments have been received.[1] The Board has carefully considered all docu-

[1] Applicants filing motions were AAXICO Airlines, Inc., American Flyers Airline Corp. and Capitol Airways, Inc., California Air Charter, Inc. and Richard D. Neumann, Coral Airlines, East Coast

ments filed and is taking this opportunity to set forth its conclusions with respect to procedural matters to the extent that such action is appropriate at this time.

A matter of paramount importance is the establishment of the issues to be tried in the proceeding. The applications noticed for hearing raise a multitude of questions

305

apart from requests for certification to provide supplemental air transportation services. Some involve issues solely in terms of conventional route-type certificates; a few request interim operating authority under Public Law 87-528; others specifically or implicitly seek individually ticketed and individually waybilled authority for the transportation of persons and property; and still others request authority cast in terms of "charter" and "non-scheduled" air transportation, air transportation "on a charter basis", or similar variants from the statutory definition of supplemental air transportation.[2]

Flying Service, Inc., Edde Airlines, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Overseas National Airways, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Sourdough Air Transport, Inc., Southern Air Transport, Inc., Standard Airways, Inc., Trans International Airlines, U. S. Overseas Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc. Motions or statements were filed on behalf of the 11 certificated route carriers, Bureau of Economic Regulation, Bonanza Air Lines, Inc., Lake Central Airlines, Inc., Pan American-Grace Airways, Inc., and Seaboard World Airlines, Inc. Answers were submitted by the 11 certificated route carriers, Bureau of Economic Regulation, Capitol Airways, Inc. and American Flyers Airline Corp., Modern Air Transport, Inc., Richard D. Neumann, Overseas National Airways, Inc., Saturn Airways, Inc., and Southern Air Transport, Inc.

[2] Section 401(d)(3) of the Act authorizing the issuance of certificates for supplemental air transportation provides as follows:

"(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a

(305, 306)

As indicated initially, the Board's purpose in causing issuance of the Notice was to consider such applications as request authority to engage in supplemental air transportation within the meaning of the Act. We adhere to that determination, and we will consolidate the noticed applications herein only insofar as the relief they seek comports with the statutory definition. Were the Board also to permit litigation of the host of extraneous questions of the type outlined, the basic function and utility of this proceeding effectively would be destroyed and there would be substituted in its place a proceeding of clearly unmanageable proportions. Because of the extremely broad nature and scope of many of the applications, a precise severance of

306

particular applications or portions thereof is for the most part impracticable.[3] All applicants are placed on notice

---

certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

"Supplemental air transportation" is in turn defined in section 101(33) of the Act to mean "charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

[3] Some applications are, however, clearly subject to severance. Included in this category are the applications of Edde in Docket

that to the extent they intended by their applications under consideration to seek authority not falling within the scope of supplemental air transportation, it will be incumbent upon them to file new applications which will take their regular place on the Board's docket.

With the proceeding restricted in this manner, the ultimate issues to be determined are those posed by section 401(d)(3). These issues are (1) whether the public convenience and necessity require the supplemental air transportation requested by the applications; (2) whether the applicants are fit, willing, and able properly to perform the transportation covered by their applications and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder; and (3) what limitations, if any, should be imposed by the Board to assure that the service rendered pursuant to any certificate to be issued will be limited to supplemental air transportation as defined in the Act. Since the authority of supplemental air carriers to engage in operations for the military is now contained in their currently effective

---

14044 and World in Dockets 14529 and 14530, which in substance seek certification under other provisions of section 401(d).

The applications of World Wide in Dockets 13915 and 13916 are interim applications which were denied by the Board, with the qualification that action upon the request for reconsideration of the denial of interim authority would be held in abeyance pending an expedited hearing on the fitness issues involved in the carrier's applications for permanent certification. Order E-19009, dated November 14, 1962. The carrier did not avail itself of the opportunity afforded. Since we are not here considering further requests for interim authority and the basis for the deferment in Order E-19009 no longer exists, the applications will be finally denied.

We find no persuasive basis for severance and separate consideration of the applications of Purdue in Dockets 13798 and 13799 as requested by Lake Central, and therefore the carrier's motion seeking this relief will be denied.

(305, 306)

As indicated initially, the Board's purpose in causing issuance of the Notice was to consider such applications as request authority to engage in supplemental air transportation within the meaning of the Act. We adhere to that determination, and we will consolidate the noticed applications herein only insofar as the relief they seek comports with the statutory definition. Were the Board also to permit litigation of the host of extraneous questions of the type outlined, the basic function and utility of this proceeding effectively would be destroyed and there would be substituted in its place a proceeding of clearly unmanageable proportions. Because of the extremely broad nature and scope of many of the applications, a precise severance of

306

particular applications or portions thereof is for the most part impracticable.[3] All applicants are placed on notice

---

certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

"Supplemental air transportation" is in turn defined in section 101(33) of the Act to mean "charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

[3] Some applications are, however, clearly subject to severance. Included in this category are the applications of Edde in Docket

that to the extent they intended by their applications under consideration to seek authority not falling within the scope of supplemental air transportation, it will be incumbent upon them to file new applications which will take their regular place on the Board's docket.

With the proceeding restricted in this manner, the ultimate issues to be determined are those posed by section 401(d)(3). These issues are (1) whether the public convenience and necessity require the supplemental air transportation requested by the applications; (2) whether the applicants are fit, willing, and able properly to perform the transportation covered by their applications and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder; and (3) what limitations, if any, should be imposed by the Board to assure that the service rendered pursuant to any certificate to be issued will be limited to supplemental air transportation as defined in the Act. Since the authority of supplemental air carriers to engage in operations for the military is now contained in their currently effective

---

14044 and World in Dockets 14529 and 14530, which in substance seek certification under other provisions of section 401(d).

The applications of World Wide in Dockets 13915 and 13916 are interim applications which were denied by the Board, with the qualification that action upon the request for reconsideration of the denial of interim authority would be held in abeyance pending an expedited hearing on the fitness issues involved in the carrier's applications for permanent certification. Order E-19009, dated November 14, 1962. The carrier did not avail itself of the opportunity afforded. Since we are not here considering further requests for interim authority and the basis for the deferment in Order E-19009 no longer exists, the applications will be finally denied.

We find no persuasive basis for severance and separate consideration of the applications of Purdue in Dockets 13798 and 13799 as requested by Lake Central, and therefore the carrier's motion seeking this relief will be denied.

interim certificates, also pertinent is the question of the extent to which any of the applicants should be certificated to provide air transportation services for the Department of Defense. Subsidiary issues within this broad general framework may well be desirable. These are, however, matters best left for formulation and resolution by the examiner as a result of the prehearing conference or in some other appropriate manner.

307

In view of the breadth of the authority requested, the complexity of the questions involved, and the number of applicants seeking authorizations, the determination of the best means of processing the applications is a particularly difficult one. On this question the filings of the parties reveal a wide divergence of views.

A few applicants desire separate hearings on their individual applications. Most recognize that some form of consolidated hearings is both necessary and desirable but differ markedly on the procedures to be followed. As far as geographic area is concerned, some applicants desire that all applications be heard together so that the issues will be world-wide in scope; others suggest separate proceedings to be conducted successively, the first dealing with overseas and foreign authority and the second with domestic issues; and still others would divide the proceeding into three or more geographic areas for separate consideration. A similar diversity of opinion exists on whether the questions of public convenience and necessity and the fitness of the individual applicants should be heard together or separately, and if separately, which should precede the other. Also, there are suggestions to the effect that this proceeding be limited to applicants who now hold

interim operating authority as supplemental air carriers and that all other applications be set for separate hearing and disposition.

After giving due weight to all of the views expressed, we have concluded that the public interest would best be served by hearing all applications on both public convenience and necessity and fitness questions in a single consolidated proceeding. If the applications were compartmentalized for separate consideration in terms of such matters as issues, geographic scope, and type of applicant, some benefits would be achieved, particularly from the standpoint of narrowing the questions to be resolved at any one time. However, these applications raise common and interrelated problems which in many respects transcend geographical divisions and can best be treated in broad perspective. All things considered, the single proceeding conducted with all issues present offers the procedural vehicle most likely to provide for a comprehensive and cohesive review of the future role of the supplemental air transportation industry, which is our primary task.

We consider it likely that the area approach would increase the total time necessary to process the applications. Moreover, the division of the applications on an area basis would require multiple participation by at least a majority of the applicants in two or more separate proceedings, since virtually all of them seek overseas and foreign as well as interstate authority, and this procedure might thus constitute a substantial drain on their energies and resources. From the standpoint of most of the applicants, the single proceeding in which all applications are heard would appear to provide the least costly and burdensome procedure.

As so constituted, the proceeding will encompass all applications to the extent that they request authority to engage in interstate, overseas, and foreign supplemental air transportation.[4] We are not persuaded that anything is to be gained here by segregating public convenience and necessity and fitness issues for separate hearing and decision. On the contrary, in the circumstances of the present proceeding, we believe that the Board would benefit from the ability to assess public convenience and necessity in the light of data concerning the operating plans, financial status, and other attributes of the fitness of particular applicants. Nor do we find any sound basis for excluding from participation in this proceeding any of the three categories of applicants desiring supplemental air transportation authorizations—new applicants, applicants holding interim authority, and those denied interim authority. Except to the extent that particular applicants may be affected by the outcome of pending cases, it would appear that all should be entitled to prosecute their applications herein.[5]

---

[4] As urged by some of the parties, we will not, however, consider herein issues related to civil passenger charter authority in the transatlantic area. Such issues are under consideration in the *Transatlantic Charter Investigation*, Docket 11908 *et al.*; and no reason is apparent to relitigate them in this proceeding. The Board's decision in the *Charter Investigation* was served on March 3, 1964 (Orders E-20530 and 20531).

[5] By Order E-19009, dated November 14, 1962, the Board, among other things, set the 401(d)(3) applications of the following carriers for hearing, with the direction that the question of fitness, willingness, and ability be heard and decided before any remaining issues: Air Cargo Express, Inc. (ACE), d/b/a Columbia Airlines (Dockets 13894 and 13895); Airline Transport Carriers, Inc., d/b/a California-Hawaiian Airlines (13884 and 13885); Blatz Airlines, Inc. (13871 and 13872); Paramount Airlines, Inc. (13897 and 13990); Quaker City Airways, Inc. d/b/a Admiral Airways,

Several of the parties have suggested that once the Board has set the scope of this proceeding and acted upon related procedural questions, further procedural steps should

309

be held in abeyance until after final decision in the *Transatlantic Charter Investigation,* Docket 11908 *et al.* and in the rulemaking proceeding in Docket 14148.[6] The proponents point out that at issue in the *Charter Investigation* are questions such as market size, liberalization of the charter rules, and whether the applicants therein will be treated as a class, all of which could have a bearing on the future course of this proceeding. Further, the possible amendments to Part 207 involved in Docket 14148 might have a major effect on the size of the charter market realistically available to the supplemental air carriers. It is asserted that for these reasons the deferment suggested would permit the development of a more meaningful record.

Inc. (13877 and 13878); and World Wide Airlines, Inc. (13904 and 13905). Subsequently, Airline Transport Carriers, Blatz and Paramount were found unfit for permanent certification and their applications were therefore denied in their entirety (Orders E-20227 and 20228, served December 3, 1963, E-20474 and E-20475, served February 14, 1964, and E-20263 and E-20264, served December 16, 1963); and prehearing conferences on the ACE and World Wide applications were indefinitely postponed at the request of the applicants, while further procedural steps with respect to Admiral were postponed pending Board decision in the *Paramount* case. If the latter three carriers desire to further prosecute their applications, it will be incumbent upon them to make that desire known by an appropriate filing within the period allowed for requesting reconsideration of this order, after which the Board will prescribe the appropriate further procedures.

[6] Docket 14148 is concerned with revisions in Part 207 of the Economic Regulations which may be necessary or desirable as the result of section 3 of Public Law 87-528, which amended section 401(e) of the Act so as to grant certificated all-cargo route carriers the statutory right to engage in passenger charters subject to regulations prescribed by the Board.

While there is substantial merit to this suggestion, there are countervailing factors to be considered. Since the Board's decision in the *Charter Investigation* has been issued, any pertinent principles to be gleaned from that proceeding are now available subject, of course, to the normal procedures with respect to petitions for reconsideration. The time of final decision in Docket 14148 is presently undetermined, and awaiting its final outcome could mean a substantial further delay in the process of hearing and deciding the present applications—a process which, under the most favorable conditions, will be protracted. Moreover, while the decisions rendered in the *Charter Investigation* and Docket 14148 may be useful in the conduct of this proceeding, they can serve only as guides and will not preclude the applicants herein from contending for the use of different rules, standards and concepts in the disposition of their applications. In addition, we cannot overlook the distinct element of public interest in avoiding unnecessary delay in disposing of the applications of carriers who have long sought the stability which would flow from permanent status. Balancing all of these considerations, we believe the better course is to move forward with this proceeding at this time.

Included in some of the filings are requests that the Board establish ground rules for the trial of this proceeding on a variety of questions, such as the scope of new authorizations that might be granted, the standards of fitness to be applied, and the type of limitations that might be imposed to assure that operations are truly supplemental in nature. These questions go beyond considerations of procedure and involve matters of substance which the Board should not undertake to decide in advance of development and evaluation of the record.

For example, the scope of permissible operations will be governed in large measure by the meaning ascribed "character", a term undefined in the Act. As in the case of the *Transatlantic Charter Investigation,* the parties herein will be free to urge their own constructions of the term as it should be applied to any awards for supplemental air transportation. Similarly, in the *Large Irregular Air Carrier Investigation,* the Board made its views known in some detail on considerations affecting fitness. The question of whether and to what extent the standards heretofore applied must or should be changed or modified in the light of the Court's decision in the *United* case[1] and the enactment of Public Law 87-528 is a matter to be litigated in this proceeding.

In the course of processing the applications for interim operating authority pursuant to Public Law 87-528, the Board reviewed, insofar as pertinent here, the fitness of some 23 carriers, granting interim authority to 15 carriers and denying it to the remaining 8. The Bureau of Economic Regulation (Bureau) proposes that, as to the scope of the fitness issues in the present proceeding, the Board's decisions on the interim applications should "as a matter of policy be deemed *res judicata*" with respect to events which occurred prior to the interim proceedings. In view of the fact that those decisions were related to the grant of interim authorizations and were not based on a hearing record, we are not prepared to treat the interim decisions as *res judicata.*

---

[1] *United Air Lines, Inc.* v. *C. A. B.,* 278 F. 2d 446 (1960), vacated *sub nom. All American Airways, et al.* v. *United Air Lines, et al.,* 364 U.S. 297 (1960).

(310, 311)

A petition for leave to intervene has been filed on behalf of 11 certificated route carriers,[8] and the petition is opposed by Modern, Saturn, and World. Modern asserts that no facts or circumstances have been demonstrated which warrant intervention, particularly since petitioners are not themselves engaged in supplemental air transportation. Saturn takes the position that intervention by these carriers should be limited to specific areas in which they have a legitimate interest. World charges that the petitioners have entered into a conspiracy to drive the supplemental air carriers out of business, and that in furtherance of that conspiracy they have entered into various agreements subject to section 412 of the Act which have not been filed with

311

the Board for approval. World concludes that intervention should be denied on the grounds that petitioners "are law violators and come into this case with unclean hands and the real purpose of said carriers is to monopolize air transportation."

We find that petitioners have sufficient competitive interest to warrant intervention and that their participation may reasonably be expected to assist in the development of a sound record. Petitioners possess extensive authority to provide charter services without regard to the points named in their certificates. For the most part, the applications herein are equally broad in scope, so that limiting petitioners' participation to specific areas is not practicable. However, we expect petitioners to utilize joint pres-

[8] American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

entations and joint representation to the maximum extent deemed feasible by the examiner, and the use of multiple counsel is to be avoided. These steps will go far in simplifying the record and expediting the conduct of the proceeding.[9]

The contentions of World are without merit. No facts are set forth in support of the carrier's allegations, and if such facts exist, there are ample procedures available by which World may seek to have them brought on in appropriate fashion for consideration by the Board. Unsupported charges of this nature, however, provide no sound basis for withholding intervention.

On the matter of intervention, we note that while the American *et al.* and Flying Tiger petitions are directed to the consolidated proceeding, other carriers and persons previously have filed petitions for leave to intervene with respect to many of the individual applications being consolidated herein. All such persons are placed on notice that if they desire to seek leave to intervene in this proceeding as now constituted, it will be necessary for them to file new petitions within the time limits prescribed by the Board's Rules of Practice.

One further procedural matter requires comment. The applications here under consideration, which were responsive to amendments to the Act made by Public Law 87-528, have been on file for over a year, and by the notice process preceding the issuance of this order all interested persons have been given a full opportunity to comment upon the principal factors involved in establishing this proceeding. Under these circumstances, there is no necessity for pro-

[9] For similar reasons we will grant the petition for leave to intervene filed by The Flying Tiger Line Inc., which is opposed by Saturn.

viding an extensive further period for the filing of new applications, motions to consolidate, or other requests addressed to the issues. Our order will therefore provide an accelerated cutoff date for the filing of such documents, after which no such further filings will be entertained. The period for filing petitions for reconsideration of this order will be coextensive with the cutoff date thus established.

312

All other motions and answers have been fully considered and have been found not to require comment or action by the Board.

ACCORDINGLY, IT IS ORDERED THAT:

1. The following applications be and they hereby are consolidated for hearing and decision in this proceeding to the extent that they request certificates of public convenience and necessity for supplemental air transportation pursuant to section 401(d)(3) of the Act: AAXICO Airlines, Inc., Dockets 13795 and 13796; American Flyers Airline Corp., Dockets 13860, 13861, and 13862; California Air Charter, Inc., Dockets 13886 and 13887; Capitol Airways, Inc., Dockets 13863, 13864, and 13865; Conner Air Lines, Inc., Dockets 13874 and 13875; Coral Airlines, Dockets 14372 and 14382; East Coast Flying Service, Inc., Docket 14464; Imperial Airlines, Inc., Dockets 13929 and 13930; Johnson Flying Service, Inc., Dockets 13867 and 13868; Marshfield Airways, Inc., Docket 14284; Modern Air Transport, Inc., Dockets 13857 and 13858; Overseas National Airways, Inc., Dockets 13881 and 13882; Purdue Aeronautics Corp., Dockets 13798 and 13799; Richard D. Neumann, Dockets 13888 and 13889; Saturn Airways, Inc., Dockets 13853 and 13854; Sourdough Air Transport, Inc.,

Dockets 13820 and 13821; Southern Air Transport, Inc., Dockets 13818 and 13819; Standard Airways, Inc., Dockets 13816 and 13817; Trans International Airlines, Dockets 13835 and 13836; Transocean Air Lines, Dockets 13921 and 13922; U. S. Overseas Airlines, Inc., Dockets 13906 and 13907; Vance Roberts, Dockets 13827 and 13828; World Airways, Inc., Dockets 13811 and 13812; and Zantop Air Transport, Inc., Dockets 13912 and 13913;

2. The following applications be and they hereby are severed from this proceeding: Edde Airlines, Inc., Docket 14044; World Airways, Inc., Dockets 14529 and 14530; and World Wide Airlines, Inc., Dockets 13904, 13905, 13915 and 13916;

3. Order E-19009, dated November 14, 1962, be and it hereby is vacated insofar as it deferred action on portions of the petition of World Wide for reconsideration of Order E-18877 and consolidated the petition, as deferred, with proceedings on the carrier's applications for certificates of public convenience and necessity in Dockets 13904 and 13905, and the said petition of World Wide for reconsideration of Order E-18877 and its applications in Dockets 13915 and 13916 be and they hereby are denied in their entirety;

4. Petitions for reconsideration of this order, motions to consolidate applications, and all other requests addressed to the issues shall be filed within twenty (20) days after the date of service of this order, and no further such petitions, motions, or requests filed thereafter will be entertained;

(313)

313

5. Answers to the petitions, motions, and requests described in ordering paragraph 4 hereof shall be filed within ten (10) days after the expiration of the period provided for the filing of such petitions, motions, and requests;

6. The persons having applications listed in ordering paragraph 1 hereof be and they hereby are made parties to this proceeding;

7. The petitions for leave to intervene filed by the Flying Tiger Line Inc. and on behalf of American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc., be and they hereby are granted;

8. To the extent not granted herein, all motions and requests be and they hereby are denied;

9. This proceeding shall be set down before an examiner of the Board for further proceedings in conformity with the provisions of this order; and

10. This order shall be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

633

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795 *et al.*

REPORT OF PREHEARING CONFERENCE

Served: JUN 2 1964

• • • • •

634

• • • • •

CARRIER INTERVENORS:

• • • • •

James Bell, Pogue & Neal, 1001 Connecticut Avenue, N. W., Washington, D. C. 20036, for Alaska Airlines, Inc. and the Trunkline Intervenors

• • • • •

637

• • • • •

This proceeding is concerned with applications seeking certificates of public convenience and necessity authorizing supplemental air transportation under Section 401(d)(3) of the Act. The scope of the proceeding, the ultimate issues, and other procedural matters were established by

(637, 639, 647)

the Board in Order E-20573, dated March 13, 1964.[1] As presently constituted, the case involves some 23 applicants and 47 applications.

• • • • •

639

• • • • •

Issues.

The suggestions of the parties for specification of particular subsidiary issues within the broad framework of the ultimate issues stated by the Board in Order E-20573 were discussed extensively. The statement of issues previously circulated by the Bureau, as revised after discussion at the conference, was accepted for the purposes of this proceeding (Appendix A). The following matters of explanation, clarification, qualification, or addition should also be noted:

1. There is no issue in this proceeding concerning the award of authority to perform civil passenger charters in the transatlantic area.

• • • • •

647

APPENDIX A TO REPORT OF PREHEARING CONFERENCE

STATEMENT OF ISSUES

The Board in Order E-20573, March 13, 1964, stated the ultimate issues to be determined in this proceeding to be as follows:

[1] See also Order E-20747, April 27, 1964.

(647, 649, 650)

1. Whether the public convenience and necessity require the supplemental air transportation requested by the applications;*

• • • • • •

649

• • • • • •

d. How should the term "charter", as related to supplemental service, be defined?

(1) Should the term "charter" include any one or more or a combination of the following:

(i) Traditional planeload charter.

(ii) Hire of aircraft by more than one charterer —Passenger and/or Cargo, Military and/or Civil.

(iii) All-Expense Tour Charter — By travel agents, hotels, resorts, or other persons.

(2) How should the types of charters indicated in item d. (1), (i), (ii), (iii) be defined and what terms, conditions, and limitations, if any, should be imposed on each if found to be required?

650

e. To what extent, if any, would the services applied for herein involve diversion of traffic from the scheduled carriers?

• • • • • •

* The awards of civil passenger charter authority in the transatlantic area is not in issue in this proceeding. Order E-20573, March 13, 1964 (p. 5).

(4108)

4108

HOLIDAY AIRWAYS, INC.

EXHIBIT HOL-T-4

TESTIMONY OF RICHARD D. NEUMANN

• • • As an example, a tour would leave Thursday, arriving Los Angeles early Thursday evening. The passenger stays overnight Thursday night, and departs for San Francisco Friday evening, arriving in San Francisco early evening. Arrangements will be made in both Los Angeles and San Francisco for entertainment and hotels. On Friday night the passenger would stay in San Francisco. On Saturday, they will be taken on a sightseeing tour throughout the San Francisco Area. On Saturday night, they would be taken on a tour of night spots and restaurants. Sunday morning the passenger would be free to attend the Church of his choice. He would return to Chicago Sunday evening. We would intend to price these tours at approximately $15.00 to $20.00 higher than the sum of the lowest local propeller or jet segment fares.

HOLIDAY AIRWAYS, INC., considers overseas and international all expense paid tours a considerably more lucrative market than the domestic tours, and therefore, would expend considerably more time and money on their promotion. • • •

• • • • • •

6065

WORLD AIRWAYS, INC.

WORLD EXHIBIT 300

	% Charter Revenue of Transport Revenue	
	Domestic	International & Territorial
1959	0.4	4.3
1960	0.5	2.7
1961	0.4	5.1
1962	0.6	5.1
1963	0.5	5.1

(Source: World Exhibits 304 and 305)

(6229)

6229

WORLD AIRWAYS EXHIBIT 1

(See opposite) ☞

Schedule of Statistics for Charter Operations
January 1, 1961 - December 31, 1963

Charter Category	Period Quarter Ended	No. of Charter Flights	Passenger No. of Pax.	Passenger Pax Miles (thousands)	Revenue
Civil Passenger:	March 31, 1961				
Interstate	"	3	274	512	$. 19,513
Overseas	"	5	450	1,096	83,646
Foreign	"	-	-	-	-
Civil Cargo:	"				
Interstate	"	-	-	-	-
Overseas	"	-(1)	-	-	-
Foreign	"	-	-	-	-
Military Passenger:	"				
Interstate	"	-	-	-	-
Overseas	"	-	-	-	-
Foreign	"	108	7,059	9,482	274,978
Military Cargo:	"				
Interstate	"	360	-	-	-
Overseas	"	-	-	-	-
Foreign	"	5	-	-	-
Total Quarter		481	7,783	11,090	$ 378,137
Civil Passenger:	June 30, 1961				
Interstate	"	17	1,530	4,662	$ 123,084
Overseas	"	13	1,170	3,555	284,338
Foreign	"	-	-	-	-
Civil Cargo:	"				
Interstate	"	-	-	-	-
Overseas	"	-(1)	-	-	-
Foreign	"	-	-	-	-

Schedule of Statistics for Charter Operations
January 1, 1961 - December 31, 1963

Form D

Charter Category	Period Quarter Ended	No. of Charter Flights	Passenger			Cargo		
			No. of Pax.	Pax Miles (thousands)	Revenue	Tons	Ton Miles (thousands)	Revenue
Civil Passenger:	March 31, 1961							
Interstate	"	3	274	512	$ 19,513	-	-	$ -
Overseas	"	5	450	1,096	83,646	-	-	-
Foreign	"	-	-	-	-	-	-	-
Civil Cargo:	"							
Interstate	"	-	-	-	-	-	-	-
Overseas	"	-(1)	-	-	-	960	56	-(1)
Foreign	"	-	-	-	-	-	-	-
Military Passenger:	"							
Interstate	"	-	-	-	-	-	-	-
Overseas	"	-	-	-	-	-	-	-
Foreign	"	108	7,059	9,482	274,978	-	-	-
Military Cargo:	"							
Interstate	"	360	-	-	-	3,285	8,373	1,664,079
Overseas	"	-	-	-	-	-	-	-
Foreign	"	5	-	-	-	110	1,516	155,324
Total Quarter		481	7,783	11,090	$ 378,137	4,355	9,945	$1,819,403
Civil Passenger:	June 30, 1961							
Interstate	"	17	1,530	4,662	$ 123,084	-	-	$ -
Overseas	"	13	1,170	3,555	284,338	-	-	-
Foreign	"	-	-	-	-	-	-	-
Civil Cargo:	"							
Interstate	"	-	-	-	-	-	-	-
Overseas	"	-(1)	-	-	-	577	180	-(1)
Foreign	"	-	-	-	-	-	-	-

(6414)

6414

WORLD AIRWAYS EXHIBIT W-5

• • • • •

In its forecast of U. S. domestic traffic (including overseas and territorial traffic), the authors felt that traffic is reaching maturity. "Opportunities for substantial fare reductions do not seem great." This highlights the continuing need to bring more Americans into the air travel market by lower fares made possible via charters.

• • • • •

With respect to the Pacific, the forecast "is based on an anticipated high order of growth in both business and pleasure travel and, again, on a gradual decrease in fares. Business travel should be stimulated greatly by the dynamic growth expected in Japan and Australia. Tourist travel will increase as hotels, restaurants, and other tourist facilities are brought to higher standards. The Pacific area is offering the tourist an increasingly popular alternative to Europe and consequently is becoming a steadily increasing travel market. The annual traffic growth rates underlying this forecast vary from just under 20 percent in the early 1960's to about 9 percent by the end of the forecast period."

• • • • •

6417

• • • • •

What Travellers Say About Pacific Area Tourism.

A later survey (November 1963) conducted by PATA[3] of travelers known to have toured the Pacific area indicated that 63.2% traveled for pleasure only, 16.1% for a combination of business and pleasure, 15% for business, 5.7% for personal and other reasons.

The (weighted) average trip length was 67.7 days for pleasure travel, 61.1 days for business. Less than a quarter of the pleasure travelers reported trips of less than 40 days, whereas slightly more than half the business travelers indicated that their last trip fell into this category. (The modal group of pleasure travelers [= 34% of total] required 41-60 days; that of business travelers [= 36.5%] took 21 to 40 days.)

The pleasure traveler visited 6.1 areas, on the average, compared with 4.1 for the business traveler. Most visits took 2 to 5 days each, although Japan generally required over 6 days.

• • • • •

6418

• • • • •

Many of the respondents (¼) were taking the Pacific trip as a vacation and had also spent their prior vacation on a Pacific trip or on a vacation within the U.S. (Cali-

[3] 71% of those sampled had used air travel. 51% of the Pacific trips took place in 1963; 82% in 1962 or 1963. Returns constituted 24.9% of the mail-out. "Only persons who indicated their last trip was beyond Hawaii were included among the tabulations". The survey was conducted in conjunction with *Holiday* magazine.

fornia or Florida primarily) or in Europe. As a group they had considerable time at their disposal for vacation (7 or 8 weeks—those on business trips to the Pacific areas took 4 weeks). This implies that Pacific travel is limited to those with lots of time and corresponding means. Consideration must, however, be given to the fact that there is desire to have the time spent commensurate with the cost, especially the cost of transportation. The lower the cost of transportation, the less time one feels one has to be abroad to "get your money's worth". The lower cost of inclusive tours opens up a market among those with less time for vacations as well as less means to pay for them.

6419

57% of all pleasure travelers reported they had bought a pre-arranged tour, of whom 44% replied that they traveled as members of an organized group, 52% traveled on an individual basis. (4% did not reply) 47% of the pleasure travelers who purchased pre-arranged tours were members of a party of two. The average number in all parties was 3.5 persons.

6622

BUREAU OF ECONOMIC REGULATION

EXHIBIT BER INDEX

INDEX

EXHIBIT NO.	DESCRIPTION
A	Bureau's Designation of Areas.
100	Civil Passenger Charters—Summary by Area, 1961-1963
101	Civil Interstate Passenger Charters—Supplemental Carriers
102	Civil Interstate Passengers Charters—Scheduled Carriers
103-A	Civil Overseas Passenger Charters—Supplemental Carriers Latin America and Caribbean
103-B	Civil Overseas Passenger Charters—Supplemental Carriers Transpacific
104-A	Civil Overseas Passenger Charters—Scheduled Carriers Latin America and Caribbean
105-A	Civil Foreign Passenger Charters—Supplemental Carriers Latin America and Caribbean
105-B	Civil Foreign Passenger Charters—Supplemental Carriers Transpacific
105-C	Civil Foreign Passenger Charters—Supplemental Carriers North America

(6622)

EXHIBIT NO.	DESCRIPTION
106-A	Civil Foreign Passenger Charters—Scheduled Carriers Latin America and Caribbean
106-B	Civil Foreign Passenger Charters—Scheduled Carriers Transpacific
106-C	Civil Foreign Passenger Charters—Scheduled Carriers North America
200	Civil Cargo Charters—Summary by Area, 1961-1963
201	Civil Interstate Cargo Charters—Supplemental Carriers
202	Civil Interstate Cargo Charters—Scheduled Carriers
203-A	Civil Overseas Cargo Charters—Supplemental Carriers Latin America and Caribbean
203-B	Civil Overseas Cargo Charters—Supplemental Carriers Transpacific
204-A	Civil Overseas Cargo Charters—Scheduled Carriers Latin America and Caribbean
204-B	Civil Overseas Cargo Charters—Scheduled Carriers Transpacific
205-A	Civil Foreign Cargo Charters—Supplemental Carriers Latin America and Caribbean
205-B	Civil Foreign Cargo Charters—Supplemental Carriers Transpacific

RELATIONSHIP OF TRAVEL AGENCY PASSENGER SALES TO PASSENGER REVENUE[1]/

JOINT INTERVENORS - DOMESTIC OPERATIONS[2]/
YEAR 1962

Response to Request of AAXICO, Purdue and World (Prehearing Conference Report, Appendix C, page 6, item II. A.3).

Volume of passenger and cargo business sold by agents during each of the last 8 calendar quarters, showing percentage this represents of total business.

Carrier	Year Ending December 31, 1962 First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Annual Total
Passenger Sales By Travel Agents ($000)					
American 5/	20,313	24,198	23,791	23,429	91,731
Braniff	2,795	3,333	3,248	3,294	12,670
Continental	2,802	3,349	3,518	3,866	13,535
Delta	10,149	10,104	11,525	10,532	42,310
Eastern 3/	26,947	23,310	3,313	18,269	71,839
National	6,660	6,241	7,602	6,539	27,042
Northwest	4,179	5,539	6,226	4,348	20,292
Trans World	15,039	18,504	18,511	18,420	70,474
United 4/	32,366	44,244	47,121	39,807	163,538
Western 5/	4,930	6,304	6,140	6,079	23,453
Total	126,180	145,126	130,995	134,583	536,884
Total Passenger Revenues (Scheduled) ($000)[1]/					
American 5/	94,569	109,260	108,138	98,344	410,311
Braniff	18,591	19,412	19,446	18,455	75,905
Continental	14,521	14,660	15,972	15,505	60,658
Delta	41,179	43,495	50,639	43,029	178,342
Eastern 3/	79,588	69,195	15,249	59,423	223,455
National	22,091	21,334	27,019	20,971	91,415
Northwest	18,857	24,119	26,465	21,025	90,466
Trans World	61,315	66,153	73,988	69,357	270,814
United 4/	112,825	145,184	152,688	122,276	532,973
Western 5/	18,261	20,681	22,742	19,487	81,170
Total	481,797	533,493	512,346	487,872	2,015,509
Percentage - Agency Sales of Total Passenger Revenue					
American 5/	21.5	22.1	22.0	23.8	22.4
Braniff	15.1	17.2	16.7	17.8	16.7
Continental	19.3	22.8	22.0	24.9	22.3
Delta	24.6	23.2	22.8	24.5	23.7
Eastern 3/	33.9	33.7	21.7	30.7	32.1
National	30.1	29.3	28.1	31.2	29.6
Northwest	22.2	23.0	23.5	20.7	22.4
Trans World	24.5	28.0	25.0	26.6	26.0
United 4/	28.7	30.5	30.9	32.6	30.7
Western 5/	27.0	30.5	27.0	31.2	28.9
Total	26.2	27.2	25.6	27.6	26.6

See page 2 of this exhibit for footnotes.

(7386)

7386

JOINT EXHIBITS OF AMERICAN FLYERS AIRLINE, ET AL.

EXHIBIT NO. J-211

Almost half of all respondents reported that they had bought a pre-arranged tour for their Pacific journey. Naturally, pleasure travelers were more inclined to do so (56.8 per cent stated they had purchased such a tour), although 11.8 per cent of the business travelers reported that they also had bought a prearranged tour.

Of the 811 pleasure travelers who bought a pre-arranged tour, 43.9 per cent indicated that they had traveled as a member of an organized group and 52.2 per cent reported they had traveled on an individual basis. (No reply was received from 3.9 per cent.)

The average number of persons in a party travelling for pleasure on a pre-arranged tour was 3.5 persons. Distribution was:

Number of Persons in Immediate Party	Percentage of Pleasure Travelers Who Purchased Pre-Arranged Tours
1 Person	15.8%
2 Persons	46.7
3 Persons	5.1
4 Persons	6.0
5 Persons	1.5
More than 5 Persons	20.1
No reply	4.8
	100.0%

Source: Survey of Pacific Travelers, PATA/Holiday Magazine, December, 1963.

7788

JOINT INTERVENORS' EXHIBIT JI-1080

Narrative Statement: Promotion Of All-Expense Tours

The exhibits contained in Volume II relate to the development and promotion of all-expense tours in the international, overseas, Hawaiian and Alaskan markets by the scheduled carriers.

The "all-expense tour" is defined by industry agreement (e.g., IATA Resolution 810e, annexed hereto) as an advertised round or circle trip, arranged and promoted with tour literature, and paid for in full by the purchaser prior to commencement of the tour. The tour must also provide, for the total duration of the tour, sleeping or hotel accommodations, and may include other facilities or attractions such as transfers, sightseeing, motor coach trips, and car rentals. These ground features amount to not less than 20% of the air fare, or $15.00, whichever is the greater.

The all-expense tour may be purchased by an individual traveller, or by a group of people, travelling with or without an escort provided by the tour operator. In addition, the ground arrangements of such a tour also may be purchased by passengers on a bona fide charter.

A further requirement is that "the price for all such land arrangements shall be published in the tour literature or a rate sheet insert" so that the passenger can establish what he is getting for his money in air transportation and ground arrangements and thereby has an opportunity of comparing the value of one tour package against another.

(7788, 7789)

I. *The Manner In Which All-Expense Tours Are Developed.*

All-expense tours are of most importance to the air transportation industry generally in the new market and for the first or second time traveller.

7789

As a new international tour market is detected, either a carrier or a tour operator proceeds to develop a package to sell that market. If it is the tour operator who takes the lead, he usually comes to a carrier or carriers and asks for support of the air tour he is developing. If it is the carrier which decides to take the lead, it may itself create the "package" and then have a tour operator perform the details of the ground arrangements. In this case the carrier itself then prints and distributes the tour folders. For example, UAL in addition to using tour operators, services to Hawaii, also has some tours for which it fulfills the role of the tour producer. More commonly, however, the carrier will, at the outset, interest and involve a tour operator and permit him to develop the tour package itself, to print the tour folder and distribute it, usually, of course, with the carrier's support.

In either case the applicable IATA agreement requires the tour operator to print or purchase at least 5,000 tour folders to obtain this support. There is no limit, of course, on how many the carrier may itself print or purchase from the operator.

The foregoing is the basic manner in which an international air carrier supports and makes possible the tour package: by participating in the development of the tour package, in the printing or purchasing of the tour folder,

and in its distribution, as well as by advertising the tour package. Once the tour package is developed, it is then retailed through the vast network of travel agency locations and through the carrier's own offices.

The carrier also participates in the tour business with its field force of sales representatives who work constantly

7790

with the retail travel agent to make sure that he is properly stocked with tour folders and that he is properly trained in how to sell them. The carrier moreover publicizes these tours. For example, Pan American has experts who do nothing but write articles on the tourist areas covered by the tours and these are widely distributed to the press. In addition, the retail travel agents throughout the world are supplied with various tour sales manuals by both the tour operators and the carriers at the expense of either the tour operators or the carrier. Complications of international routings and the great variety of tour offerings in this field have so far prevented the consolidation of these manuals into an industry publication but there is no lack of technical guidance material to the retailing travel agents in this area.

It would be useful to lay out the actual economies of tour production here. When the tour package meets the requirement of the IATA Resolution, the carrier pays to the agent a 10% commission on the air fare instead of the standard 7%. This amount is generally passed along by the tour operator to the retailer, if a retailer is involved.

The retail travel agent thus draws 10% on the air fare when selling a tour and will receive, in addition, 10% or slightly more from the hotels and sightseeing operators

involved in the package, either directly from them or from the tour operator who produced the package. The tour operator derives his profit from special arrangements made with sightseeing operators and hotels which often involve net rates or commissions rising to a fairly average level of 15%, and from marking up the total price of the ground arrangements involved in the tour.

7791

The carrier also makes other contributions to the development of the tour. IATA Resolution 204 permits the grant of one free ticket to a tour conductor for every fifteen tour passengers and a 50% reduction for a tour conductor accompanying eleven to fourteen passengers.

A partial survey has been made of the amounts expended by certain carriers on all-expense tour promotion for the calendar year 1963. For Pan American this promotional activity for Hawaii, Alaska and Pacific markets cost $258,000, and for Latin American markets the expenditure amounted to $357,000. Northwest's expenditure for Hawaii, Alaska and Pacific tour promotion was $93,000 and United spent $100,000 in promoting its Hawaii all-expense tour market. Braniff estimates its expenditure for the Latin American area at $99,000, and for Mexico only American expended $8,000 while Western estimates expenditures of $200,000 in this market.

II. *Specific Examples Of Promotion Of All-Expense Tours.*

Exhibit JI-1082 consists of Northwest's Tour Manual and JI-1081 consists of folders of Pan American, TWA, Northwest, UAL, American, Braniff and Western relating to international, overseas, Hawaiian and Alaskan markets.

It should be emphasized that these folders are merely a selection from the total production by tour operators and carriers each year. As to their scale, no tour operator would approach the national U. S. market with the printing of less than 50,000 copies, and many of the folders

7792

illustrated in the exhibit have been printed in numbers running well over 100,000 copies per year. The total tour availability runs into many millions of individual folders, both of special and of general interest to the prospective passenger, be he golfer, skin-diver, archeologist, camera fan, theatre critic, historian, or just plain tourist. Thus an immense variety of offerings is available to him to meet his most varied desires. Moreover, this is true not only in the U. S. sales market but everywhere that a mass tourist market exists throughout the world. In the case of Pan American, the copies of these folders are distributed by the tour operator or the carrier to all of Pan American's own 289 sales outlets and to the 8,500 travel agency locations which Pan American, under its highly conservative appointment policy, has under appointment throughout the world, and to many of the 9,000 interline ticket offices which are trained to issue tickets on Pan American's behalf. Thus in the case of Pan American alone there are some 15,000 sales outlets for these packages around the world. This policy is generally followed by other carriers as well in promoting this type of service.

III. *Dollar Volume Of All-Expense Tour Operations.*

While it has not been possible to obtain figures for all of the U. S. flag international carriers, all-expense tour

(7792, 7793)

business is of immense importance to all of them and they, as well as travel agents, derive great benefit from the carriage of this kind of traffic.

The Pan American figures will serve as an example of this importance. For the calendar year 1963, revenues

7793

from the carriage of all-expense tour passengers in the Pacific and Hawaiian area amounted to $17,939,000 or 13.6% of its passenger revenues obtained in this area. In Latin America, the revenue figure was $10,302,000, or 8% of its applicable passenger revenue, and in its Alaska operations $153,000, or 3.5% of passenger revenues in that geographic area. Northwest has estimated revenues from the carriage of such passengers at $2,670,000, producing for that carrier 7.6% of its Pacific, Hawaii and Alaska area passenger revenues and representing 8,900 passengers. In its Hawaii market, United carried 40,542 passengers, 15.1% of its total Hawaii passengers, for revenues of $5,000,000.

8084

JOINT INTERVENORS' EXHIBIT JI-B

TESTIMONY OF JAMES F. MONTGOMERY

* * * * *

D. The grant of all expense tour authority would cause serious diversion.

All expense tours would appeal primarily to the vacation traveler. Attached to my testimony as Appendix A is a table which shows the enormous amount of such revenue now obtained by the certificated carriers which would be exposed to diversion by grant of the authorizations herein.

It is also pertinent to note the amount of revenues obtained by the scheduled carriers from travel agents' sales: for example, 64% for Braniff in its Latin American operations, and almost 39% for Pan American in its Pacific operations.[1] The passengers who produced these revenues are, in effect, subject to the control of the travel agents. Now this is a situation of which I approve entirely. Pan American and, I believe, most other carriers fully recognize that agents are of vital importance in the air transport business because the agent and the airline today have a common goal. However, this situation would radically

[1] Both figures are low because they do not include interline and general agents' sales made by agents, and because the total sales against which the percentages are calculated include both military and charter revenue.

change if agents were allowed to charter aircraft for all expense tours. Assuming such an agent's charter, his primary economic incentive would be to fill his plane, and he would do all in his power to persuade a passenger to take that charter flight instead of selling him a ticket on a scheduled flight.

8847

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Supplemental Air Service Proceeding

Docket No. 13795

BRIEF TO THE EXAMINER OF

American Airlines, Inc.,
Braniff Airways, Inc.,
Continental Air Lines, Inc.,
Delta Air Lines, Inc.,
Eastern Air Lines, Inc.,
National Airlines, Inc.,
Northwest Airlines, Inc.,
Pan American World Airways, Inc.,
Trans World Airlines, Inc.,
United Air Lines, Inc., and
Western Air Lines, Inc.

POGUE & NEAL
1001 Connecticut Avenue, N.W.
Washington, D. C. 20036

March 19, 1965

(8848)

8848

INDEX

INTRODUCTION

Page

I. All applications to provide all expense tour charters to travel agents, should be denied as unlawful, unneeded, and highly detrimental to the orderly development of air transportation 2

A. The Board lacks the statutory authority to permit supplementals to charter aircraft to travel agents for all-expense tours 2

1. The legislative history of P. L. 87-528 demonstrates that Congress considered all-expense tour charters to travel agents selling individual space to the general public tantamount to prohibited individually ticketed travel 2

2. In any event, the failure of travel agents to appear in this proceeding to present evidence as to how, when, and where all-expense tours will be performed, and their qualifications to provide such service, precludes the Board from making the required statutory findings in this proceeding to implement an all-expense tour charter program 6

B. There is no public need for the applicants' all-expense tour proposal 8

(8848, 8849)

Page

1. The applicants all-expense tour proposal would merely duplicate, not supplement, the public service benefits now available through the literally hundreds of all-expense tours offered, and vigorously promoted, by the certificated carriers 8

2. Such new traffic as may be stimulated by the cut-rate fares involved in the applicants' all-expense tour proposal pales into insignificance when compared to the massive exposure to diversion of revenue derived by the trunklines from pleasure travel 12

a. The argument that the cut-rate feature of the applicants' all expense tour proposal will generate an entirely new class of air traffic not presently moving by air is sheer verbalization 12

b. The applicants all-expense tour program will permit travel agents to mount an extensive solicitation of the general public in mass media advertising based on cut rate fares, thereby exposing to diversions in excess of $380 million derived by the trunklines from pleasure travel 16

8849

c. A "restricted" all-expense tour program would still embrace diversion of such significance, without redeeming public

Page

benefits, as never to warrant adoption of the program 22

3. Reliance by the applicants upon the European inclusive tour experience as a demonstration of "need" is utterly erroneous 23

4. The argument of the applicants that their all-expense tour program is needed to solve the U.S. balance of payments problem is without merit 34

C. The applicants' all-expense tour proposal is highly detrimental to the orderly development of air transportation 36

1. Implementation of the all-expense tour proposal will thwart achievement of the goal of American flag air transportation: improved service with low, nondiscriminatory fares .. 36

2. There is a very real public danger arising out of having an all-expense tour program controlled by an uncontrolled tour operator industry 38

D. The argument that the "private" need of the applicants requires the grant of all-expense tour authority must be rejected as both inaccurate and as an invalid basis for operating authority 42

1. One of the most incredible current myths is that the supplementals are "marginally profitable" and need "strengthening" 42

(8849, 8850)

Page

2. The argument that the supplementals "need" all-expense tour authority in order to meet the 30% commercial revenue rule of the DOD is both inaccurate and an invalid basis for certification 44

3. The 12 supplementals surviving in an industry once comprising 105 carriers have available to them a substantial affinity commercial charter market within the 48 continental United States which, along with military charters, will permit them to continue as profitable enterprises 47

4. The argument of the applicants that their all-expense tour program is needed to solve their alleged seasonal problems is without merit 48a

8850

II. The applicants have abandoned on the record their request to provide split charters 48a

• • • • •

(10010)

10010

Recommended Decision of Examiner Robert L. Park

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795 *et al.*

Served: August 27, 1965

Upon: APPLICANTS:

Leonard Bebchick, 1225—19th Street, N. W., Washington, D. C. 20036, for AAXICO Airlines, Inc.

Ramsay D. Potts, 910—17th Street, N. W., Washington, D. C. 20006, for American Flyers Airline Corporation.

George Berkowitz, 233 Broadway, New York 7, New York, for Capitol Airways, Inc.

F. A. Conner, Agent, P. O. Box 122, Miami Springs, Florida, for Conner Air Lines, Inc.

Warren E. Miller, 810—18th Street, N. W., Washington, D. C., for Conner Air Lines, Inc., and Johnson Flying Service, Inc.

Robert R. Johnson, President, Johnson Flying Service, Inc., Box 1366, Missoula, Montana, for Johnson Flying Service, Inc.

Howard S. Boros, 711—14th Street, N. W., Washington, D. C. 20005, for Holiday Airways, Inc.

(10010, 10011)

James P. Becker, Agent, Trenton Airport, Trenton, New Jersey, for Modern Air Transport, Inc.

Albert F. Beitel, 905 American Security Building, Washington, D. C., for Modern Air Transport, Inc.

C. Booker Powell, 1010 Vermont Avenue, Washington, D. C., for Overseas National Airways, Inc.

Jerrold Scoutt, Jr., 1104 Brawner Building, 888—17th Street, N. W., Washington, D. C. 20006, for Purdue Aeronautics Corporation and World Airways, Inc.

Lester M. Bridgeman, 1027 Woodward Building, Washington 5, D. C., for Saturn Airways, Inc., and Vance International Airways, Inc.

James J. Bierbower, P. O. Box 19067, Washington 6, D. C., for Southern Air Transport, Inc.

(continued)

Exceptions, if any, must be filed with the Docket Section, Civil Aeronautics Board, Washington, D. C. 20428, and served upon all parties within 10 days after the date of service shown above. Briefs may be filed and served on all parties within 20 days after the date fixed for filing exceptions.

10011

Robert E. Fraley, 11065 Baird Avenue, Northridge, California, for Standard Airways, Inc., and Stewart Air Service.

John J. Klak, Klak & Gerth, 818 LaSalle Building, 1028 Connecticut Avenue, Washington, D. C. 20036, for Standard Airways, Inc.

Edgar A. Stewart, Sr., Municipal Airport, Chico, California, for Stewart Air Service.

Clayton L. Burwell, 720 Federal Bar Building, Washington, D. C. 20006, for Trans International Airlines, Inc.

Arnold Rotman, Weiner & Rotman, 6901 Topanga Canyon Boulevard, Canoga Park, California 91303, for United States Overseas Airlines, Inc.

Vance Roberts, P. O. Box 320, Boeing Field, Seattle, Washington, for Vance International Airways, Inc.

James H. French, 1625 K Street, N. W., Washington, D. C. 20006, for Zantop Air Transport, Inc.

Robert J. Wilson, 1120 Connecticut Avenue, N. W., Washington 6, D. C., for Zantop Air Transport, Inc.

CARRIER INTERVENORS

John W. Kern, III, 912 American Security Building, Washington 5, D. C., for Airlift International, Inc.

James Bell, Pogue & Neal, 1001 Connecticut Avenue, N. W., Washington, D. C., for the Trunkline Intervenors and Alaska Airlines, Inc.

James M. Verner, Verner, Liipfert and Bernhard, Suite 1035, Universal Building North, 1875 Connecticut Avenue, N. W., Washington, D. C. 20009, for Allegheny Airlines, Inc., Bonanza Air Lines, Inc., Frontier Airlines, Inc., Hawaiian Airlines, Inc., Lake Central Airlines, Inc., Ozark Air Lines, Inc., and Trans-Texas Airways, Inc.

Edwin I. Colodny, Hangar 12, National Airport, Washington, D. C. 20001, for Allegheny Airlines, Inc.

Harry A. Bowen, 803 Jefferson Building, 1225—19th Street, N. W., Washington, D. C. 20036, for Aloha Airlines, Inc., and Frontier Airlines, Inc.

Albert F. Grisard, 412 Metropolitan Bank Building, Washington, D. C. 20005, for Bonanza Air Lines, Inc., and Lake Central Airlines, Inc.

Arthur M. Taylor, Jr., General Counsel, Bonanza Air Lines, Inc., P. O. Box 391, Las Vegas, Nevada, 89100, for Bonanza Air Lines, Inc.

Ivan V. Kerno, 1201 Shoreham Building, Washington, D. C. 20005, for The Flying Tiger Line, Inc.

Richard A. Fitzgerald, 5900 East 39th Avenue, Denver 7, Colorado, for Frontier Airlines, Inc.

Vernon Bortz, Pratt, Moore, Bortz, and Vitousek, 11th Floor, First National Bank Building, Honolulu 13, Hawaii, for Hawaiian Airlines, Inc.

Lloyd W. Hartman, President, Lake Central Airlines, Inc., Weir Cook Airport, Indianapolis, Indiana, 46241, for Lake Central Airlines, Inc.

Robert B. Hankins, Pierson, Ball, and Dowd, 1000 Ring Building, Washington, D. C. 20036, for Mackey Airlines, Inc.

Jean Paul Bradshaw, 701 Woodruff Building, Springfield, Missouri 65805, for Ozark Air Lines, Inc.

10012

Cecil A. Beasley, Jr., 730—15th Street, N. W., Washington 5, D. C., for Pacific Air Lines, Inc., Piedmont Aviation, Inc., and Southern Airways, Inc.

Harry White, Pacific Air Lines, Inc., International Airport, San Francisco, California, for Pacific Air Lines, Inc.

Howard C. Westwood, 701 Union Trust Building, Washington, D. C. 20005, for Pan American-Grace Airways, Inc.

Jerry W. Ryan, Pan Am Building, 200 Park, New York, New York, for Pan American World Airways, Inc.

Gerald P. O'Grady, Koepenick & O'Grady, 1625 I Street, N. W., Washington, D. C. 20006, for Pacific Northern Airlines, Inc.

(10012)

Robert Kadlec, Piedmont Aviation, Smith Reynolds Airport, Winston-Salem, North Carolina, for Piedmont Aviation, Inc.

Stephen L. Gelband, 1001 Connecticut Avenue, N. W., Washington, D. C. 20036, for Seaboard World Airlines, Inc.

J. K. Courtenay, Southern Airways, Inc., Atlanta Airport, Atlanta, Georgia, for Southern Airways, Inc.

Theodore I. Seamon, 700 Woodward Building, Washington, D. C., for Trans Caribbean Airways, Inc.

R. E. McKaughan, President, 11th Floor, Lincoln Liberty Center, Houston 2, Texas, for Trans-Texas Airways, Inc.

RULE 14 PARTICIPANTS

Colonel Eugene B. Sisk, HQ MATS, Scott Air Force Base, Illinois, for the Department of Defense.

Clement T. Mayo, Defense Traffic Management Service, Room 1929, Building T-7, Washington, D. C., for the Department of Defense.

OTHERS

Charles A. Hobbs, 1616 H Street, N. W., Washington, D. C., for the American Society of Travel Agents.

James Lawrence Smith, Civil Aeronautics Board, Washington, D. C., for the Bureau of Economic Regulation.

Martin L. Friedman, Chapman, Friedman, Shea, Clubb, and Duff, Pensylvania Building, Washington, D. C. 20004, for United States Overseas Airlines, Inc. (Change of Counsel)

10013

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795 *et al.*

It is recommended that the Board find:

1. Six applicants—Conner Air Lines, Inc., Holiday Airways, Inc., Overseas National Airways, Inc., Standard Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc.—do not possess the qualifications necessary for certification as supplemental air carriers and their applications should therefore be denied.

2. The remaining eleven applicants—American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc.-AAXICO Airlines, Inc., Southern Air Transport, Inc., Trans International Airlines, Inc., Vance International Airways, Inc., World Airways, Inc., and Zantop Air Transport, Inc.—should all be certificated to engage in supplemental air transportation domestically between the 50 States and the District of Columbia. Certifications required for supplemental air transportation between the United States and overseas and foreign areas are as follows: (a) Canada—Johnson and Purdue; (b) Canada and Mexico—American Flyers,

Modern, Vance, and Zantop; (c) Caribbean—American Flyers, Capitol, Saturn-AAXICO, Southern, TIA, and World; (d) Central and South America—TIA and World; (e) Transpacific—Southern, TIA and World; and (f) Transatlantic (cargo only)—Capitol and Saturn. Except in the transatlantic area where the carriers selected already have passenger charter authority, all certificates should include operating rights with respect to both persons and property.

3. All of the successful applicants should retain worldwide authority to perform planeload charters for the Department of Defense on a permanent basis.

4. The supplemental air transportation services authorized include the following: (a) traditional planeload passenger and cargo charters; (b) split charter authority limited to traditional passenger charters, which would permit a maximum of three groups per aircraft with each group to consist of 40 or more passengers; (c) all-expense tour charters to tour operators.

10014

5. All-expense tour charters should be authorized under regulations which, among other things, (1) require individual pre-flight approvals from the Board and any necessary exemptions for tour operators before such charters are operated; (2) set minimum duration and stop requirements of seven days with at least two destination cities, no less than 50 miles from each other, to be served on each tour; and (3) require that the cost to the passenger

of the tour be at least 110 percent of the lowest basic, applicable fare of the scheduled air carriers, provided that in all cases the ground elements of the tour shall cost at least $15.

6. Except for all-expense tour charter authority, the certificates authorizing interstate supplemental air transportation should be permanent. Interstate all-expense tour charter authority, and all certificates for overseas and foreign supplemental air transportation, should be granted for an experimental period of five (5) years.

7. Regulations relating to supplemental air carriers should be revised in accordance with the recommendations contained in Appendix F hereto.

Appearances:

Leonard Bebchick for AAXICO Airlines, Inc.
Ramsay D. Potts for American Flyers Airline Corp.
George Berkowitz for Capitol Airways, Inc.
Warren E. Miller for Conner Air Lines, Inc., and Johnson Flying Service, Inc.
Howard S. Boros for Holiday Airways, Inc.
Albert F. Beitel for Modern Air Transport, Inc.
Stephen D. Potts for Overseas National Airways, Inc.
Jerrold Scoutt, Jr. and *Walter D. Hansen* for Purdue Aeronautics Corp., and World Airways, Inc.
Lester M. Bridgeman for Saturn Airways, Inc., and Vance International Airways, Inc.
John J. Klak for Standard Airways, Inc.

(10014, 10015)

Robert E. Fraley for Standard Airways, Inc., and Stewart Air Service.

James J. Bierbower for Southern Air Transport, Inc.

Clayton L. Burwell for Trans International Airlines, Inc.

James H. French and *Robert J. Wilson* for Zantop Air Transport, Inc.

James Bell, George Neal, Brian Elmer, and *Robert Shorb* for the Trunkline Intervenors.

James Bell for Alaska Airlines, Inc.

James M. Verner and *John H. Suda* for Allegheny Airlines, Inc., Bonanza Air Lines, Inc., Frontier Airlines, Inc., Hawaiian Airlines, Inc., Lake Central Airlines, Inc., Ozark Air Lines, Inc., and Trans-Texas Airways, Inc.

Edwin I. Colodny for Allegheny Airlines, Inc.

Albert F. Grisard for Bonanza Air Lines, Inc., and Lake Central Airlines Inc.

Ivan V. Kerno and *Norman L. Meyers* for The Flying Tiger Line, Inc.

10015

Harry A. Bowen and *Richard A. Fitzgerald* for Frontier Airlines, Inc.

Vernon Bortz for Hawaiian Airlines, Inc.

Robert B. Hankins for Mackey Airlines, Inc.

Jean Paul Bradshaw for Ozark Air Lines, Inc.

Cecil A. Beasley for Pacific Airlines, Inc., Piedmont Aviation, Inc. and Southern Airways, Inc.

Alexander E. Bennett and *Howard C. Westwood* for Pan American-Grace Airways, Inc.

Jerry W. Ryan, James F. Bell, and *George Neal* for Pan American World Airways, Inc.

Stephen L. Gelband and *Joel Fisher* for Seaboard World Airlines, Inc.

Theodore I. Seamon for Trans Caribbean Airways, Inc.

Clement T. Mayo for the Department of Defense.

Charles A. Hobbs for the American Society of Travel Agents.

James Lawrence Smith and *William J. Driscoll* for the Bureau of Economic Regulation.

(10018)

10018

RECOMMENDED DECISION OF EXAMINER ROBERT L. PARK

INTRODUCTION

Simply stated, the basic purpose of this proceeding is to provide the factual record necessary for a comprehensive and cohesive review of the future role of the supplemental air transportation industry in this Nation's air transportation system. As finally constituted, the case involves some 39 applications prosecuted by 18 applicants, which generally seek the most unrestricted possible type of certificate of public convenience and necessity that would authorize worldwide charter operations for the transportation of both civil and military passengers and property.[1]

After the usual preliminary procedural steps, the case proceeded to public hearings, which were conducted in two stages: the first was devoted to the more generalized considerations of public convenience and necessity, and the second to the fitness and qualifications of the individual

[1] The applicants are: AAXICO Airlines, Inc. (AAXICO), American Flyers Airline Corp. (American Flyers), Capitol Airways, Inc. (Capitol), Conner Air Lines, Inc. (Conner), Johnson Flying Service, Inc. (Johnson), Modern Air Transport, Inc. (Modern), Overseas National Airways, Inc. (ONA), Purdue Aeronautics Corp. (Purdue), Holiday Airways, Inc. (Holiday), Saturn Airways, Inc. (Saturn), Southern Air Transport, Inc. (Southern), Standard Airways, Inc. (Standard), Stewart Air Service (Stewart), Trans International Airlines, Inc. (TIA), United States Overseas Airlines, Inc. (USOA), Vance International Airways, Inc. (Vance), World Airways, Inc. (World), and Zantop Air Transport, Inc. (Zantop). Two applications of an additional applicant, Sourdough Air Transport, were a part of the proceeding through the hearing phase but subsequently were dismissed for want of prosecution. Order E-21676, January 14, 1965.

applicants. In addition to the applicants, numerous other parties were granted leave to intervene, the most active of which in their participation throughout the proceeding

10019

were the Board's Bureau of Economic Regulation (Bureau) and the certificated route carriers (Joint Intervenors).[2]

The hearings have been completed, briefs to the Examiner have been filed and the matters at issue are now ripe for decision.[3]

---

[2] The Joint Intervenors are composed of Pan American World Airways, Inc. (Pan American) and all of the trunkline air carriers except Northeast Airlines, Inc., viz., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc. As shown by the service list accompanying this decision, the other intervening parties are the American Society of Travel Agents, Mackey Airlines, Inc., Pan American-Grace Airways, Inc., Trans Caribbean Airways, Inc., the two certificated Hawaiian carriers, two mainland U. S.-Alaska carriers, three all-cargo carriers, and nine local service carriers.

[3] The applications under consideration here involve requests not only for certificates to engage in interstate supplemental air transportation, on which the Board may take final action, but also seek authorizations to engage in overseas and foreign supplemental air transportation. Disposition of the applications to the extent that they request the latter types of authority is subject to the approval of the President pursuant to section 801 of the Act. The orders and proposed forms of certificates which are appended give recognition to the Presidential and non-Presidential portions of the proceeding. However, in view of the close interrelationship of the facts, issues, and considerations applicable to both the domestic and international phases of the applications, the issuance of a separate decision by the Examiner as to each phase was not considered to be either feasible or desirable. Accordingly, this recommended decision encompasses all matters involved in the proceeding, *cf.* Recommended Decision of Examiner Wiser, *American-Eastern Merger*, Docket 13355, November 27, 1962 (f.n. 2, p. 1).

Background

The present-day supplemental air carriers have had a complicated and often turbulent history. While their development has been considered in detail on numerous occasions by the Board and the courts, a brief consideration here of the more significant background facts is necessary to an understanding of the setting within which this case is to be decided.

10020

Since the inception of regulation in 1938 under the Civil Aeronautics Act, the predecessor to the present statute, the American air transportation system has had "non-scheduled", "irregular", or "supplemental" operators. Originally they functioned under a general exemption which relieved them of the necessity of obtaining a certificate of public convenience and necessity required by section 401(a) of the Act and of complying with certain additional regulatory provisions that otherwise would be applicable to their limited operations.[4] In the initial years their flight activities tended to be of a highly specialized nature, conducted with small aircraft, and normally of a kind associated with a fixed base operation.

The close of World War II brought with it a substantial surplus of large transport-type aircraft and flight-oriented personnel desirous of placing them in commercial service. This development meant an increased economical signifi-

[4] Then, as now, the exemption provision (section 416(b)) enabled the Board to relieve an air carrier of such requirements upon appropriate findings of undue burden upon the carrier and of public interest.

cance for "nonscheduled" air transportation services and it also posed additional regulatory problems for the Board. The Board responded first by modifying its blanket exemption regulation in 1947 to require, among other things, a Letter of Registration from the Board as a condition precedent to operations with large aircraft, the holders of which were known as large irregular carriers. Generally speaking, these carriers were authorized to engage in interstate and overseas air transportation of persons and property (and foreign air transportation of property only)

10021

between any two points, provided that the services were held out and operated on an infrequent and irregular basis.[5]

Although the Board imposed a "freeze" on issuance of new Letters of Registration in 1948, the large irregulars continued to operate in this fashion until 1949. In that year the regulation was again revised so as to terminate the blanket exemption, and the Board in lieu thereof began to act upon applications for individual exemption authority. These applications were in various stages of processing when the Board, in September 1951, decided to institute the *Large Irregular Air Carrier Investigation*, Docket 5132 *et al.* The purpose of the *Investigation* was to determine (1) the appropriate place of the large irregulars in the national air transportation system and the extent of the

[5] The various geographic components of air transportation are defined in section 101(21). In general terms, interstate operations are between the 50 states; the overseas category involves air transportation service between the United States and its territories and possessions; and foreign air transportation is that between a place in the United States and a place outside thereof.

operations which they should be permitted to conduct, (2) the carriers to receive operating authority, and (3) whether the authorization should be by way of certificate under section 401 of the Act or by exemption from the certificate and other requirements.

The *Investigation* consumed over a decade of hearings, decisions, and court litigation. In 1955 the Board decided the public interest issues in the case.[6] It found that the large irregular carriers, thereafter to be known as sup-

10022

plemental air carriers, were performing a useful public service responsive to a public need and that their authority should be continued and enlarged. The Board concluded that, in addition to an unlimited number of planeload charter operations, the supplementals should be permitted to conduct regularly scheduled individual services up to a maximum frequency of 10 one-way flights per month between any two points.[7] At the time the Board did not undertake to decide the questions concerning the applicants' qualifications and the form of authority ultimately to be granted, but issued an exemption giving the entire class of carriers the new authority on an interim basis pending

[6] *Investigation*, 22 C. A. B. 838 (1955).

[7] Geographically, the authority to operate charter flights and limited frequency individual passenger and cargo services applied in interstate, intraterritorial (excluding services within Alaska), and overseas air transportation, while flights in foreign air transportation were to be restricted to charter and individually waybilled cargo services only. For reasons not here pertinent, the new authorizations as to foreign air transportation did not become effective, and the authority in this area reverted to the preexisting "irregular" authority. Order E-10161, April 3, 1956.

resolution of these further questions. Upon judicial review the Court, while not taking issue with the Board's determination as to the need for and scope of supplemental services, found that the Board's action was defective in that the Board had made insufficient findings to support the interim exemption, since it could not be determined from the Board's order what circumstances "could make certification an undue burden" on the supplementals or why their certification "is not in the public interest."[8]

10023

While the judicial review proceeding was pending, and subsequently, the *Investigation* was going forward on the issues of carrier qualification, carrier selection, and the form of authority to be issued. In 1959 the Board reached final decision in the interstate phase on these questions and issued certificates to the applicants comprising the supplemental air carrier class who were found to be qualified.[9] These certificates, among other things, authorized the holders to engage in air transportation domestically of the scope found required in the 1955 decision, without regard to fixed routes or designated points. Upon judicial review, however, the Board's action was again found to be legally defective, this time by virtue of the Court's holding that section 401(e) of the Act precluded the issuance of

[8] *American Airlines, Inc.* v. *C. A. B.*, 98 U. S. App. D. C. 348, 235 F. 2d 845, 851 (1956), *cert. den.* 353 U. S. 905 (1957).

[9] *Investigation*, 28 C. A. B. 224 (1959). The Board thereafter decided to issue similar certificates in the overseas and foreign phases. *Investigation*, 32 C. A. B. 856 (1961). However, the President withheld his approval and the certificates never became effective in view of the Court's action in the *United* case, *infra*.

certificates as granted by the Board which did not contain named terminal and intermediate points, and also precluded the 10-flight limitation.[10]

Being thus unsuccessful in its efforts to authorize supplemental air carrier operations of the type and scope it deemed required by the public interest, the Board presented

10024

the matter to Congress for clarifying legislation. The Congress first enacted stop-gap interim legislation which was designed to afford Congress further time within which to consider the broader questions.[11] To this end, it authorized the Board to validate previously existing certificates and to confer interim operating authority to engage in supplemental air transportation for a further period of 20 months. Then, on July 10, 1962, Congress enacted Public Law 87-528,[12] which is of direct relevance to the present proceeding.

Among other things, Public Law 87-528 amended the Act by adding new definitions of "supplemental air car-

---

[10] *United Air Lines, Inc.* v. *C. A. B.*, 108 U. S. App. D. C. 1, 278 F. 2d 446 (1960), vacated *sub nom. All American Airways, et al.* v. *United Air Lines, et al.*, 364 U. S. 297 (1960). Section 401(e) of the Act as it existed at that time contained an unqualified requirement for specification of terminal and intermediate points in a certificate and an explicit direction that no certificate should restrict the right of a carrier to add or change schedules, equipment, etc. As noted *infra*, there have been subsequent amendments of the Act directed to these problems as they relate to supplemental air carriers (section 401(e)(3) and (e)(4)).

[11] Public Law 86-661, 74 Stat. 527, July 14, 1960.

[12] 76 Stat. 143.

rier" [13] and "supplemental air transportation" [14] as well as a new subparagraph to section 401 of the Act concerning the issuance of certificates for supplemental air transportation.[15] The net effect of these various actions was to supersede all prior regulation of the supplementals and to confine the future role of these carriers exclusively to the operation of charter services. The supplemental air transportation which the Board may authorize was limited to that which would supplement the scheduled ser-

10025

vices certificated pursuant to other subsections of section 401(d),[16] and is to be made subject to "such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act." [17] As far as the specification of terminal and intermediate points in supplemental air carrier certificates is concerned, the amended Act requires such specification to the extent that the Board considers it practicable, and otherwise it "shall designate only the geographical area or areas within or between which service may be rendered." [18]

---

[13] Sec. 101(32).

[14] Sec. 101(33).

[15] Sec. 401(d)(3).

[16] *Id.*

[17] Sec. 401(d)(3).

[18] Section 401(e)(3). Other of the principal amendments of the Act should be briefly noted. Section 401(n) was added to give the Board broad powers with respect to supplemental air carriers in the imposition of requirements for insurance, performance bonds

(10025, 10026)

In addition, upon findings of fitness, willingness, and ability properly to perform such transportation and to conform to regulatory requirements, the legislation empowered the Board to issue new interim certificates or new interim authorizations for supplemental air transpor-

10026

tation to those applicants meeting specified requirements, which would be effective pending disposition of their applications for permanent authority pursuant to section 401(d)(3) of the Act.[19] In order to ease the transition to an all-charter type of operation, Public Law 87-528 also authorized the Board to permit, for a phase-out period not to exceed two years from date of enactment of legislation, continuation of individually ticketed and individually waybilled services subject to certain restrictions.[20]

The Board's initial processing of the requests for interim authority was completed in the fall of 1962. All of the supplemental air carriers issued interim certificates were

---

or equivalent security arrangements for the protection of the public, and minimum standards of operational performance. It also imposed a continuing fitness requirement upon the supplementals and gave the Board powers of suspension and revocation under particular conditions. The Board's authority to impose civil penalties was extended to violations of economic regulatory provisions (section 901), and under new section 417 the Board may issue special operating authorizations to supplemental air carriers so as to enable them to meet temporary needs for individually ticketed and individually waybilled service between points within the United States, upon finding the existence of the circumstances specified in this section.

[19] P. L. 87-528, Sec. 7.

[20] Sec. 9.

authorized (1) to perform unlimited cargo and passenger charter flights in interstate air transportation, (2) to engage in air transportation of persons and property pursuant to contracts with the Department of Defense, and (3) to conduct cargo charter flights in overseas and foreign air transportation subject to certain conditions. Virtually all were granted civil passenger charter rights in overseas air transportation, mostly for use as backhauls in conjunction with military operations, and a few may conduct intraterritorial cargo and/or passenger charter flights. No supplemental initially received authority to transport passengers in foreign air transportation. However, more recently two supplemental carriers were certificated to pro-

10027

vide transatlantic civil passenger charters,[21] and the interim certificates of four other supplementals have been amended to include authority to operate civil passenger charters in the transpacific or transatlantic areas, or both, for temporary periods.[22] About half of the interim certif-

---

[21] Capitol and Saturn in the *Transatlantic Charter Investigation*, Docket 11908 *et al.*, Orders E-20530 and E-20531 served March 3, 1964. The Board originally also selected ONA as a third carrier but the President returned the Board's order without his approval because of serious questions concerning ONA's financial fitness that arose after the Board's decision. The record has now been reopened for further hearings to determine whether supplemental service additional to that provided by Capitol and Saturn should be authorized, and if so, by whom. Order E-21966, March 30, 1965.

[22] World and TIA both received such authority with respect to transpacific operations for the interim period pending disposition in this proceeding of their applications for permanent certificates. Orders E-21304, September 21, 1964, and E-21574, December 9, 1964. The same two carriers may now perform transatlantic pas-

icate holders were granted certificates that included authority to conduct individually ticketed and individually waybilled services during the transitional period, authority which expired on July 10, 1964, by the terms of Public Law 87-528.

Despite the tortuous course of their fortunes through the entire period of their development, the large irregulars and their successors, the supplementals, by one means or another retained continuous authority to operate while the obstacles in their path were being removed. Their ranks, however, were substantially depleted due to such factors as economic attrition, certification for scheduled services, revocation for violations or failure to operate, Board findings of lack of qualification, and the like. Thus, in contrast

10028

to the 142 Letters of Registration issued to irregular carriers in the 1947-1948 period, only 30 supplemental air carriers held authority as of the date of enactment of Public Law 87-528. Twenty-seven applications for interim authority under that legislation were processed by the Board and, insofar as relevant here, 15 were granted.

The present proceeding is the culmination of this evolutionary process, for it is here that disposition will be made of the applications for permanent certificates as supplemental air carriers filed pursuant to Public Law 87-528.

---

senger charters for the 1965 season, with their authority expiring on September 30, 1965. Order E-22045, April 16, 1965. More recently American Flyers and Modern both received identical transatlantic authority. Order E-22260, June 2, 1965; Order E-22357, June 24, 1965.

Fifteen of the 18 applicants are the 15 survivors who were issued interim certificates or authority;[23] two others, Conner Air Lines and Stewart Air Service, are former large irregular carriers which do not hold interim authority; and the remaining one, Holiday Airways, is a new company with no prior experience in conducting air transportation services.

The Issues

From the foregoing discussion it is evident that the questions for decision run the entire gamut of matters relevant to ascertaining the permanent place, if any, of the supplemental air carriers in the air transportation system. As

10029

stated by the Board, the ultimate issues are those posed by section 401(d)(3) of the Act, viz.,

> "(1) whether the public convenience and necessity require the supplemental air transportation requested by the applications; (2) whether the applicants are fit, willing, and able properly to perform the transportation covered by their applications and to conform to the provisions of the Act and the rules, regulations,

[23] Of the 15, only 12 have been operating currently. They are AAXICO, American Flyers, Capitol, Johnson, Modern, Purdue, Saturn, Southern, TIA, Vance, World and Zantop. AAXICO previously was an all-cargo carrier rather than a supplemental air carrier but was able to qualify under the provisions of P. L. 87-528. USOA's interim certificate was revoked for lack of financial qualification (Order E-21325, September 24, 1964); Standard was suspended on the same grounds by Order E-20468, February 12, 1964; and ONA discontinued operations on October 4, 1963, and is presently involved in bankruptcy proceedings.

and requirements of the Board thereunder; and (3) what limitations, if any, should be imposed by the Board to assure that the service rendered pursuant to any certificate to be issued will be limited to supplemental air transportation is defined in the Act." [24]

Included are not only questions relating to civil operations involving supplemental air transportation but also those concerned with the extent to which any of the applicants should be certificated to provide air transportation services for the Department of Defense.

These extensive issues logically divide themselves into public convenience and necessity, fitness, and regulation issues, and include numerous subissues within each category.[25] In broad outline, public convenience and necessity matters are concerned primarily with the public need for supplemental air carrier service, and require consideration of the impact that certification of the applicants, or any of them, would have on the other presently certificated carriers. Also inherent in the "need" aspect of the proceeding is the determination of whether the public convenience and necessity require that any authority granted be issued to a class of carriers, as has been the Board's practice

heretofore, or whether such authorizations should be tailored to meet particular needs and requirements. Geo-

[24] Order E-20573, March 13, 1964, p. 3.

[25] The subissues as developed as the result of the prehearing conference are contained in Appendix A to the Prehearing Conference Report, issued June 1964.

graphically, the possible areas for certificating operations by the applicants are worldwide in scope, except that the Board has excluded from consideration here any grant of authority to supplemental air carriers for civil passenger charter flights in the transatlantic area and the authorization of supplemental air transportation within Alaska.[26]

Fitness is essentially the matter of qualification applicable to any party seeking certification, and the standards used in making this judgment must give due recognition to any inherent differences between supplemental air transportation and the more conventional types of certificated operations. Important ingredients are both operational and financial fitness, as well as comparative qualifications in those instances where the Board may be picking and choosing between competing applicants. The terms, conditions, and limitations imposed on the supplementals must assure sound regulation and adequate protection of the public; and they must carry out the Congressional directive that the services permitted be of a kind that "supplement the scheduled service" authorized by other types of certificates issued by the Board. Stated somewhat

---

[26] Orders E-20573, March 13, 1964, and E-20902, June 5, 1964. As indicated previously, section 401(e)(3) requires that any certificates issued designate terminal and intermediate points if "practicable", and if not, the designation in lieu thereof of the geographic area or areas for service. In addition, it already has been noted that the disposition of all applications is subject to approval of the President insofar as they request authority to engage in overseas and foreign supplemental air transportation. All applicants except Stewart Air Service have requested this authority, and copies of their applications making this request have been transmitted to the President in accordance with the provisions of section 801 of the Act.

differently, there is a basic statutory mandate that authorizations for supplemental air transportation, which by definition is confined to "charter trips in air transportation", respect the distinction between charter or group transportation, on the one hand, and individually ticketed and individually waybilled air transportation services, on the other.[27] Except in situations contemplated by section 417 of the Act, individual services are, and have been since the enactment of Public Law 87-528, the sole prerogative of the certificated scheduled carriers.[28]

By far the greatest emphasis throughout has been upon the applicants' efforts to expand the scope and nature of their authority. Virtually all of the applicants seek removal of the historic barriers against the supplementals as a class engaging in passenger operations in foreign air transportation so that they may for the future provide unlimited passenger and cargo charter operations in all geographic areas open to them under the issues in this proceeding. Most applicants do not oppose a grant of authority of identical scope to other applicants found qualified.[29] And all urge that the Board in delineating

---

[27] Section 101(33) defines "supplemental air transportation" as "* * * charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

[28] Section 417 is the vehicle by which supplementals may be authorized to meet temporary and limited needs for individual services. See f.n. 18, *supra*.

[29] To the extent relevant, the positions of the various applicants are discussed in the summaries set forth in Appendix A hereto.

their authority redefine the word "charter" to include "all-expense tour" charters to ticket agents or "split" charters, or both, in addition to the traditional planeload charters now authorized.[30]

---

[30] As will appear in more detail later, the word "charter" is undefined in the Act. Generally, the Board has heretofore restricted its meaning to the engagement of the entire capacity of an aircraft by a person for his own use or by a representative of a group for the use of such group, provided, however, that ticket agents may not charter aircraft themselves and in turn sell transportation to the public on an individual basis. The usual types of planeload charters are "pro rata" charters, where the cost is divided among the passengers transported; "single entity" charters, where the entire cost is borne by the charterer; and "mixed" charters, where the cost is absorbed partly by the participants and partly by the charterer.

"Split" charters are ones in which one-half of an aircraft is engaged by one person or group otherwise eligible to obtain charter services, and the remaining half is engaged by another such person or group, thus permitting two relatively small groups jointly to charter an aircraft. At present this type of authority is enjoyed by the supplemental carriers holding authority to provide transatlantic civil passenger charters.

The "all-expense tour" charter does not presently exist in our transportation system. It is generally understood to mean a charter in which a tour operator or ticket agent would engage an aircraft for the carriage of persons traveling on all-expense tours. Such tours would involve not only the point-to-point air transportation but also related land portions such as the necessary surface transportation, hotel accommodations, sightseeing, etc. The question of authorizing all-expense tour charters has been litigated only in the *Transatlantic Charter Investigation*, and the Board's decision denying applications for such authority in that case has not been finally acted upon by the President. Order E-20776, April 30, 1964. In January 1965 the Board proposed to grant such authority to all supplementals on an interim basis pending decision on their applications in this case, but subsequently it deferred any further action at this time. (SPDR-6, January 5, 1965, and SPDR-

The pertinent contentions of the parties concerning the issues and the relevant evidence in support of their positions are discussed in appropriate sections of this decision.

10033

It is worthy of note at this point, however, that on public convenience and necessity issues there are substantial areas which are not in dispute. Thus, no party opposes the grant of unlimited passenger and cargo authority to the applicants for the conduct of military operations on behalf of the Department of Defense, although the Bureau, unlike the applicants, would not grant such authority on a worldwide basis but would make it coextensive with the civil authority, if any, awarded to each applicant. Further, there is no objection to the certification of qualified applicants to provide conventional passenger and cargo planeload charters between the contiguous 48 states (or between such states and transborder points), provided that the Board imposes appropriate restrictions to prevent the rendition of individually ticketed services in the guise of charters.[30a] The real controversy centers around any geo-

---

6A, April 27, 1965, Docket 15777.) There is some suggestion by various applicants here that they should be authorized to sell individually ticketed all-expense tours directly as well as by charters to ticket agents. The Board has already determined that such proposals are tantamount to individual services which do not fall within the scope of charter transportation. *Transatlantic Charter Investigation*, Order E-17607, October 18, 1961.

[30a] A possible exception is Flying Tiger. Although its position is not entirely clear, its brief to the Examiner (p. 4) is susceptible to the interpretation that the carrier opposes any service, civil or military, by any supplemental. However, Flying Tiger did not participate actively in the proceeding and has pointed to no evidence in support of such a position.

graphical expansion of supplemental air carrier operations beyond these limits, any liberalization of the charter concept to include split charters and all-expense tour charters, and, to a lesser extent, upon the fitness, willingness, and ability of particular applicants.

HISTORIC CHARTER OPERATIONS

A great mass of statistical compilations and other data were submitted by the parties concerning the past charter operations of the supplementals and the scheduled carriers. Perhaps the most significant is the informative and valuable work done by the Bureau in collecting and correlating information for the years 1961 through 1963 submitted by

10034

all carrier parties in this proceeding, and much of this data is reflected in capsule form in Appendix B to this decision. Appendix C, which is based upon the reports filed with the Board by the 15 applicants herein which were originally issued interim operating authority as supplemental air carriers, sets forth various comparative measurements of revenue and financial results for the supplemental industry for the years ended September 30, 1961-1964. The more important facts to be gleaned from the record with respect to past operations will now be considered.

The Dominance of the Military Charter Services. Although the supplementals always have conducted substantial operations for the military, during the latter forties and the decade of the fifties many concentrated primarily

(10034, 10035)

in other areas, particularly individually ticketed passenger transportation. In recent years, however, the reliance by the supplementals as a group upon military revenues as their primary source of income has become plainly evident. Today every operating supplemental except Johnson Flying Service engages in some form of military carriage. Whereas in 1959 military revenues represented somewhat over 50 percent of the total transport revenues of the supplemental air carriers, they now contribute 70 percent or more. The rising importance of the military dollar and the declining significance of individual sales for the years 1961-1964 are shown in the table below:[31]

	Trans. Revs.	% Mil.	% Civ.	% Ind. Sales
1961	$ 59,290,000	71.9	13.5	14.6
1962	75,686,000	74.3	12.2	13.5
1963	96,106,000	78.7	15.5	5.8
1964	100,420,000	71.6	25.1	3.3

10035

The degree of dependence upon operations for the Department of Defense is also shown by other indicators. In calendar year 1963, for example, 74.1 percent of the revenue passenger-miles flown by the supplementals and 90.8 percent of their total cargo ton-miles were attributable to their military services.

Notwithstanding the great difference in size when compared to the certificated route industry, the supplemental air carriers are firmly established as a source of primary reliance in meeting military requirements for charter ser-

[31] Appendix C.

vices. The situation in calendar year 1963, which was fairly representative of the relationship between the supplemental carriers and the scheduled carriers over the past few years, is graphically illustrated by the division of military charter revenue shown below:[32]

	Scheduled	Supplemental	Total
Military Passenger			
Interstate	$10,070,437	$ 6,911,686	$ 16,982,123
Overseas	—	6,344,558	6,344,558
Foreign	20,747,767	21,348,793	42,096,560
Military Cargo			
Interstate	5,363,230	27,406,534	32,769,764
Overseas	—	1,450,791	1,450,791
Foreign	2,311,580	6,175,073	8,486,653
TOTAL	$38,493,014	$69,637,435	$108,130,449

10036

Thus, about 64 percent of the total dollars spent by the military for civil air transport was received by the supplementals. From a geographic standpoint, they were the primary or exclusive operators in all areas except interstate military passenger charter services, and even there the supplementals were responsible for 40 percent of the total revenue. The supplementals were particularly promi-

[32] As compiled from the Bureau's exhibits. There are some differences between these figures (as well as those concerning civil operations, subsequently discussed) and the dollar amounts set forth in Appendix B. However, the discrepancies are minor and have no material significance.

nent in the transportation of military cargo, receiving roughly 80 percent of the funds expended for such services.[33]

As might be expected, there has been a marked variation between the individual supplementals in the degree of their reliance on military revenues. Looking at the year ended September 30, 1964, to illustrate the point, the supplementals developed $71,865,000 in military contract and charter revenues. Three of the 15 applicants here who hold or then held supplemental authority—Johnson Flying Service, ONA, and USOA—performed no military services while those operated by three others—Purdue, Vance International, and Standard—developed under $80,000 each for the year. At the other extreme, World Airways was the recipient of $22,162,000 in military revenues, representing 89.2 percent of its total contract and charter revenues and about 30 percent of the military revenues of all the supplementals combined. World, together with four of the other major supplemental carriers having a relatively high dependence on military operations,[34] as a group

10037

accounted for 79 percent of the military revenues of the entire supplemental industry.[35]

---

[33] The comparison may also be made on the basis of charter passengers and tons of cargo transported. In calendar 1963 the supplementals carried some 330,000 military passengers and 26,048 tons of cargo as contrasted to about 274,000 passengers and 3,467 tons for the route carriers.

[34] AAXICO (98.8 percent), Capitol (66.4 percent), Southern (77.7 percent), and TIA (83.9 percent).

[35] The calendar year 1963 total of some $38.5 million in military charter revenues of the certificated route carriers was divided

Supplemental Civil Operations. During the latter 1950's and early 1960's the civil contract and charter revenues of the supplementals tended to remain static with little in the way of a discernible pattern. However, starting with 1962 there has been a sharp acceleration in the absolute volume and relative significance of such revenues, a development which is largely attributable to two factors. The first was the enactment of Public Law 87-528 which required a phase-out of all individually ticketed and waybilled services of the supplementals by July 10, 1964. The second was the announcement by the Department of Defense of its new commercial contract airlift policy under which "contracts for Fiscal Year 1966 * * * will be limited in amount so that carriers who receive contracts will derive at least 30% of their air transportation revenues during Fiscal Year 1966 from commercial sources." [36] This combination of circumstances has compelled the supplementals as a matter of practical necessity to lend every effort to the fullest possible exploitation of the civilian charter markets.

---

roughly on the basis of 70 percent for the combination passenger-cargo carriers and 30 percent for the all-cargo carriers. The all-cargo carriers generated 97 percent ($7.5 million) of the military cargo revenues of the scheduled carrier industry, virtually all in the interstate and transatlantic markets, and about 40 percent ($4,123,490) of the interstate military passenger revenues. The largest single area for the combination carriers was military passenger carriage across the Pacific for which they received $20.7 million.

[36] JI-R-111. This policy contemplates that eventually the percentage of revenue from commercial sources should reach 60 percent.

(10038)

10038

Historic data for the calendar years 1961-1963 as compiled by the Bureau, showing the functional and geographic distribution of the contract and charter revenues of the supplementals, is set forth below:

	1961	1962	1963
CIVIL PASSENGER	$3,847,262	$4,101,666	$6,003,769
Interstate	2,565,924	2,087,360	4,093,435
Overseas	1,121,881	1,865,184	1,730,437
Latin America & Caribbean	12,775	10,913	20,011
Transpacific	1,109,106	1,854,271	1,710,426
Foreign	159,457	149,122	179,897
North America	92,147	53,887	125,617
Latin America & Caribbean	—	21,101	—
Transpacific	67,310	74,134	54,280
CIVIL CARGO	561,126	1,025,824	1,345,810
Interstate	147,740	524,182	778,231
Overseas	145,537	175,602	289,282
Latin America & Caribbean	145,537	175,602	203,782
Transpacific	—	—	85,500
Foreign	267,849	326,040	278,297
North America	64,628	54,557	43,452
Latin America & Caribbean	171,393	130,244	194,060
Transpacific	—	—	26,785
Transatlantic	31,828	141,239	14,000
TOTAL	$4,408,388	$5,127,490	$7,349,579

It will be noted that the most sizeable increases in the 1963 total took place in the interstate passenger and cargo revenues and that revenues derived from operations in other geographic areas have not been large. The largest single item in overseas and foreign markets is the $1,710,426 appearing as overseas passenger revenues (transpacific), all of which was earned by World Airways as the result of mixed passenger and cargo flights operated under contract with Western Electric Company.[37]

Appendix C provides a more dramatic illustration of the rising tide of supplemental civil contract and charter revenues in both an absolute and relative sense. The supplemental industry totals for such revenues and their relationship to prior years were as follows:

	Amount	% Total	% Increase Prior Year
1962	$ 9,222,000	12.2	15.4
1963	14,924,000	15.5	61.8
1964	25,240,000	25.1	69.1[38]

[37] Since the supplementals lack certificate authority to transport civil passengers in the foreign field, such operations as they have had in this area were conducted pursuant to individual exemptions granted by the Board. In 1963, 49 applications were filed by the supplementals for authority to operate flights in the Caribbean, Latin America, and Bermuda areas. Between June 30, 1964, and June 1, 1965, the Board granted some 55 exemptions covering flights by the supplemental air carriers to Mexico, the Bahamas, Jamaica, and Bermuda, with the largest participants being American Flyers (19), Saturn (18), and Capitol (12). CAB, Weekly Summary of Orders and Regulations.

[38] Appendix B, prepared by the Bureau on a calendar year basis, shows civil charter revenues of $7,443,336 in 1963 and $27,982,592 in 1964. Here again, the principal areas of increase are in interstate passenger and cargo operations. As noted in the appendix, the 1964 total includes the substantial transatlantic revenues of Capitol and Saturn.

Despite the rapid growth of civil revenues in recent periods the supplemental air carriers as a group remain significantly short of the 30 percent requirement imposed by the Department of Defense. As of the year ended September 30, 1964, seven supplementals derived more than 30 percent of their transportation revenues from civil business while the remaining five operating carriers were below this percentage in varying degrees.[39] And, as in the case of operations for the military, the participation in civil revenues by the operating carriers does not fall into a pattern of even distribution but shows a wide fluctuation between the individual members of the class. In the year ended September 30, 1964, for example, civil contract and charter revenues for supplementals operating throughout the year ranged from a high of $7,793,000 for Zantop downward to $104,000 for a carrier such as AAXICO, the fifth ranking carrier in terms of military revenues. The top generators of civil revenues were Zantop ($7,793,000), Capitol ($5,340,000), Saturn ($3,455,000), and World ($2,690,000), and these four carriers together accounted for over $19 million, or 76 percent, of the civil revenues of all the supplemental air carriers combined.

The Present Status of the Supplemental Industry. The vast differences between the supplemental carriers reduce the value of generalizations and underline the necessity for

[39] Those exceeding the 30 percent limitation were American Flyers (33.8 percent), Capitol (31.8 percent), Johnson Flying Service (100 percent), Purdue (86.9 percent), Vance International (53.4 percent), Saturn (73.6 percent) and Zantop (46.3 percent). The carriers with less than the 30 percent ratio were AAXICO (1.2 percent), Modern (9 percent), Southern (18.9 percent), TIA (16.1 percent), and World (10.8 percent).

considering the situation of each individual carrier. With this caveat, some broad conclusions are apparent concerning their present status.

10041

There has been a noticeable improvement for the supplementals as a group in many of the indicia of operational and financial strength. Considered on a year-end September 30 basis, the total assets of the 15 applicants herein who were issued interim authority rose from $27,716,000 in 1961 to $95,090,000 in 1964; their operating revenues for the same years from $62 million to $103 million; and their operating profit in the same period from $2 million to $13 million. In the critical area of civil contract and charter revenues there has been an increase from $14,924,000 in 1963 to $25,240,000 in 1964, and such revenue now accounts for at least 25 percent of their total transport revenues. All six carriers holding fiscal year 1965 long term military contracts managed to improve their positions in this respect in this two year period. In the case of two carriers, AAXICO and World, the improvement on a percentage basis has been relatively small. However, two others—Capitol and Zantop—now meet the 30 percent criteria established by the Department of Defense, and the remaining two—TIA and Southern—recorded substantial gains in civil revenues.[40]

---

[40] Appendix C. The increases in the percentage of total operating revenues represented by civil contract and charter business from the year ended September 30, 1963, to the same point in 1964 were as follows: AAXICO, 0.6 percent to 1.2 percent; Capitol, 14.9 percent to 31.8 percent; Southern, 8.5 percent to 18.9 percent; TIA, 1.3 percent to 16.1 percent; World, 8.3 percent to 10.8 percent; and Zantop, 36.3 percent to 46.3 percent.

(10041, 10042)

Despite the brighter outlook for the supplementals in some respects, there are still significant problem areas apparent from an overall assessment of their financial condition which affect most components of the group. Their total net worth has shown a sharp increase—$1.2 million in 1961 and $19,625,000 in 1964. However, as an industry

10042

they have not attained the one-to-one ratio of current assets to current liabilities, deemed desirable for most business enterprises, for any year in this four-year period. Further, in each of these four years the supplementals as a class have had a negative net working capital position—$1,552,000 in 1961, $5,208,000 in 1962, $8,820,000 in 1963, and $2,978,000 in 1964. Although this unfavorable working capital position has been a characteristic of the supplemental industry, it has not demonstrably interfered with the ability of most of the operating carriers to expand operations and improve net worth. For example, Capitol, TIA, and Zantop had a combined negative working capital position in the year ended September 30, 1964, of about $9.4 million. Nonetheless, for the same period they showed substantial individual operating profits, a combined operating profit of over $6 million, and a combined positive net worth of $6,366,000; in fact, they ranked between the second and fifth positions in the supplemental industry by these units of measurement.[1]

[1] It should be noted that both the industry net worth and working capital figures cited are affected adversely by the inclusion of data concerning USOA, Standard, and ONA, carriers which are not now operating. If they are excluded, so as to limit the industry to the 12 operating supplementals, the negative working capital position of the industry for 1964 would be reduced to $679,000 and total net worth increased by $2.3 million.

As the data in Appendix D disclose, despite such gains as they have been able to achieve the supplementals have occupied a modest role in the total air transportation picture. Operating revenues for the certificated route carriers increased from $3.57 billion in the year ended September 30, 1963, to over $4 billion in 1964, or 12 percent, compared to an increase from $98 million to $103 million, or 5 per-

cent, for the supplementals. While the supplementals as a group were increasing their operating profit from $5 million in 1963 to $13 million in 1964, that of the certificated route carriers more than doubled from $166 million to $350 million and rose to the 1964 level from a loss position of $16 million in 1961. In terms of distribution of the market, the relative positions of the respective groups have remained substantially unchanged—about 97.5 percent for the certificated route carriers and 2.5 percent for the supplementals. However, their respective participation in total industry operating profits clearly favors the certificated route carriers. In 1962 the latter group of carriers obtained 89.8 percent of the industry operating profits as contrasted to 96.4 percent in 1964, while the share of the supplementals declined from 10.2 percent to 3.6 percent in the same period.[42]

[42] The Joint Intervenors note that for the year ended September 30, 1964, five supplementals—AAXICO, Capitol, TIA, World, and Zantop—had sizeable rates of return on investment and on stockholders' equity. However, the Joint Intervenors would be the first to contend, were the question one relating to their own earnings, that profitability patterns must be assessed from a long range standpoint rather than by a keyhole approach. The record makes clear that the results indicated are not representative when viewed over a period of years, either for these individual carriers or for the supplemental industry generally.

(10043, 10044)

As has been the situation for the past several years, the paramount problem for the supplementals is how best to achieve a substantial expansion of their civil business. The solution to this problem is of fundamental importance both to provide a sound economic base for their operations and to permit them maximum participation in military revenues. While it may be reasonably anticipated that the level of military need for auxiliary assistance from civil air carriers will continue to be high or to increase, two

10044

other factors are of particular significance. The first is the Board's action in March 1965 setting new and reduced minimum rates for both international and domestic military air transportation, the effect of which will be to reduce the governmental cost for international military air transportation alone of about $19 million annually with additional savings to the government domestically.[43] Unless compensated for by carrier cost-savings or additional volume, the supplementals, as major participants in military carriage, may be materially affected.

The other military aspect is, of course, the future application of the Department of Defense "30 percent commercial" requirement. Appendix E illustrates the situation as it existed for the six supplemental air carriers holding long term military contracts for fiscal year 1965, based on operating results for the year ended September 30, 1964. Looking at their actual operating revenues for the year, the six carriers as a group were $5,265,000 short of meeting the 30 percent ratio had it been in effect during

[43] CAB Press Release, 65-25, March 18, 1965 (ER-432, PS-26).

that period. Taking their actual commercial revenues as representing the 30 percent, their maximum entitlement, as a group, to military revenues would have totaled $48,494,000, some $17.5 million less than the military revenues actually received. Put another way, in order to maintain their actual 1964 military revenues of $66 million, again assuming effectiveness of the Department of Defense policy, it would have been necessary for these carriers as a group to generate an additional $7,522,000 from civil business. Viewing the carriers individually, in order to maintain their 1964 level of military business, Capitol

and Zantop would have no difficulty since they fully met the 30 percent quota. However, four carriers—AAXICO, Southern, TIA, and World—had shortages in civil revenues necessary to comply with the 30 percent standard of $3,477,000, $566,000, $2,398,000, and $6,747,000, respectively.[44]

Since the close of the record the Department of Defense contracts for fiscal year 1966 have been awarded.[44a] The military will pay approximately $155 million for airlift by civil air carriers as compared to about $129 million in fiscal 1965. The share of the supplementals has been increased to $52,354,000 from the prior year level of $43,468,000 and the contracts will be performed by the same six supplemental air carriers. By reason of the loss of its LOGAIR contract in 1966 Capitol will experience a

[44] Should the Board approve the Saturn-AAXICO merger agreement, AAXICO, as the surviving carrier, will have substantially solved its problem in this respect.

[44a] Press Release CAB 65-78, June 30, 1965.

net loss in military revenues of $2,885,000. The remaining five, however, will have net increases—$1,925,000 for AAXICO, $670,000 for Southern, $1,755,000 for TIA, $51,000 for World, and $7,370,000 for Zantop.

Civil Operations of Other Carriers. In contrast to the vital role of civil contract and charter revenues for the supplementals, the civil charter business of the certificated route industry is a relatively minor part of their activities, whether gauged by passengers and tons of cargo carried, revenue passenger-miles, revenue aircraft miles flown, or other of the usual indicators. A breakdown of the revenues received for 1963 presents a fairly representative picture.

10046

As reported to the Bureau, the civil charter revenues for the scheduled carriers—trunks, local service carriers, all-cargo carriers and international combination passenger-cargo carriers—were as follows:

	Total
CIVIL PASSENGER	
Interstate	*$12,015,846*
Overseas	*898,908*
Latin America & Caribbean	898,908
Transpacific	—
Foreign	*3,430,287*
North America	1,098,184
Latin America & Caribbean	2,058,370
Transpacific	273,733
Total Civil Passenger	$16,345,041

(10046, 10047)

CIVIL CARGO	
Interstate	*335,170*
Overseas	*158,556*
Latin America & Caribbean	74,417
Transpacific	84,139
Foreign	*2,564,538*
North America	24,566
Latin America & Caribbean	103,965
Transpacific	376,204
Transatlantic	2,059,803
Total Civil Cargo	$ 3,058,264
Total, passenger and cargo	$19,403,305

10047

The ten trunklines comprising the Joint Intervenors accounted for $10,686,088 of the total of $12,015,846 in interstate passenger revenues, and of this amount one carrier—United—generated $5,604,938, or 52 percent.[45] The balance in the interstate passenger charter field was composed of $833,603 for the local service carriers and $496,155 for the all-cargo carriers. Of the overseas passenger total, $891,548 was developed by the combination carriers to $7,360 for the all-cargo carriers, while the foreign passenger charter revenues were divided $169,100 for the all-cargo carriers

[45] The remaining trunk, Northeast Airlines, was not included. However, in 1963 Northeast had only $146,000 in passenger charter business and none in freight charters as against overall transport revenues of $6.86 million. CAB, *Air Carrier Financial Statistics.*

and $3,261,187 for the combination carriers. The all-cargo carriers produced $227,190 of the $335,170 earned from interstate civil cargo charters and all of the $158,556 in overseas cargo charters. Foreign cargo charters were also dominated by the all-cargo carriers which developed $2,214,129 from this source to $350,409 for the combination carriers.

The comparative insignificance of civil passenger and cargo charters for the scheduled carriers is best illustrated by relating the revenues received to the overall transport revenues of the carriers involved. The Joint Intervenors claim for 1963 domestic civil charter revenues of $9,953,000, about four-tenths of 1 percent of their total transport revenues of roughly $2.4 billion. In foreign and overseas operations for the same year the ratio ranged around 1 percent or less for the individual carriers, with a high of 2.4 percent for Pan American's Latin American division. Included in the foregoing tabulation are reported civil charter revenues of $838,351 for local service carriers as

contrasted to 1963 overall transport revenues for the local service industry of $156,689,000 (exclusive of an additional $68 million in subsidy). And the three all-cargo carriers supplying data—Airlift International, Flying Tiger, and Seaboard—reported total civil charter revenues of $3,272,490, roughly 4 percent of their total system revenues in 1963 of $83.2 million. Seaboard, which strongly opposes any competition from supplementals for transatlantic civil cargo charters, developed $755,520 from this source, which represents less than 3 percent of its 1963 total transport revenues of $26,552,000.

Even if the comparison is made on the basis of *all* contract and charter revenues—passenger and cargo, military and civil—the result is not changed materially and no significant growth trend for charter operations of the scheduled carriers is evident. While charter revenues as a percent of total transport revenues have progressively increased for the supplementals from 65.1 percent in 1959 to 93.2 percent in 1963, they have remained static for the domestic trunks—0.4 percent in 1959 and 0.5 percent in 1963. The same is true for the international and territorial combination carriers (5.4 percent in 1959 and 5.8 percent in 1963), and the charter revenues of local service carriers as a percentage of their total transport revenues declined from 2.5 percent in 1959 to 1 percent in 1963. For the all-cargo carriers, the percentage rose in 1962 to 86.8 percent (domestic) and 59.2 percent (international and territorial) but declined to 76.2 percent and 48.4 percent, respectively, in 1963.[46]

10049

THE FUTURE FOR TRADITIONAL CHARTER SERVICE

Historic data concerning traffic and participation have a significant bearing on future market potential, but they do

---

[46] CAB *Handbook of Airline Statistics and Air Carrier Analytical Charts and Summaries.* The above percentages for all-cargo carriers are not representative of their civilian activities since, so far as appears from this record, the bulk of their charter revenues are obtained from military rather than civil operations. There is a further distortion by reason of the type of data included. The 1963 totals, for example, include substantial revenues for AAXICO, now a supplemental air carrier, and for Slick and Aerovias Sud Americana, air carriers which did not furnish information or otherwise participate in this proceeding.

not provide the exclusive or necessarily the most important basis for resolving these questions. There are numerous other and often contradictory considerations to be assessed in reaching the ultimate judgment.

The substantial and valuable role of the supplemental air carriers in providing passenger and cargo service for the Department of Defense cannot be seriously disputed, and no party has undertaken to do so on this record. Their past contribution in fulfilling day to day military requirements, as well as their response to emergency situations exemplified by the Berlin blockade, the Korean war, and the Lebanon crisis, have all been chronicled in detail and need no reiteration.[47] The supplementals have provided and continue to provide a sizeable and flexible reservoir of trained personnel and equipment, fully committed to the purposes of national defense. In view of the worldwide nature of this country's international commitments, and with the existing state of political upheaval and unrest, notably in Southeast Asia and the Caribbean, there is every indication of a strong continuing need for the services of the supplemental air carriers to meet present and future defense requirements.

10050

Similarly, there is no real argument with the proposition that the traditional planeload passenger and cargo charter operations domestically between the 48 contiguous states by the presently operating and qualified supplementals

[47] *Large Irregular Air Carrier Investigation*, 22 C. A. B. 838, 860 (1955); S. Rep. No. 688, 87th Cong., 1st Sess. (1961), to accompany S. 1969, p. 21; H. R. Rep. No. 1177, 87th Cong., 1st Sess. (1961), to accompany H. R. 7318, p. 16.

serve a useful public purpose responsive to public need. By their past charter operations the supplementals have earned their niche as an established part of the domestic air transportation system. Their domestic charter operations have shown substantial growth, particularly since the enactment of Public Law 87-528 and the termination of all individual sales authority, and the future charter potential for the supplementals within these limitations is conceded. Indeed, the Joint Intervenors, in urging restriction of any award for the supplemental air carriers to traditional planeload charters operated domestically or to transborder points, contend that there is a vast reservoir of underdeveloped affinity group charter business available in the United States. To this end they presented an estimate purporting to show that members of national charter-worthy organizations and their families alone represent a group charter potential of some 300 million people. While this forecast is suspect in technique and unreliable as a quantitative measurement of the probable market, it does indicate a sizeable source of charter traffic that has not been fully exploited by either the supplementals or the certificated route carriers.

Turning to overseas and foreign charter operations, the past provides a less informative guide to the future. In the area of civil passenger charters across the Atlantic, which are not in issue here, the certificated route carriers in recent years have had intense competition from the

10051

foreign air carriers and the supplementals for charter business; yet the result has been that during this period both scheduled and charter traffic have grown substantially.

(10051, 10052)

With this exception, however, no parallel situation exists in which to measure as precisely the probable future development under comparable competitive conditions.[48]

There are wide differences in the relative size of overseas and foreign markets as shown by past air traffic. The largest—the transatlantic—had 2.9 million passengers in 1963, followed by Central America and the Caribbean (2.4 million); the transpacific, composed of Asian and Oceania countries (600,000); and South America (418,000). The West Coast-Hawaii and principal U.S.-San Juan markets, which the Joint Intervenors would withhold from the supplementals, are sizeable ones, accounting for 1963

10052

O & D passengers totaling 645,000 and 1.2 million, respectively. In terms of the number of passenger charters

---

[48] The more salient facts concerning the transatlantic passenger charters can be briefly noted. Both scheduled service traffic and charter traffic on the North Atlantic have shown strong growth patterns, and while TWA and Pan American have shared in the scheduled traffic growth, their participation in charter traffic has been static or dwindling. Thus scheduled traffic of the U.S. and foreign air carriers rose from about 1.7 million passengers in 1961 to 2.2 million in 1963, or approximately 31 percent, with the participation of Pan American increasing from 403,602 passengers to 539,015 and that of TWA from 207,630 passengers to 359,143. Although total charter traffic increased by some 97 percent, or three times as fast (148,366 in 1961 to 292,352 in 1963), Pan American's charter passengers declined from 22,490 to 16,014 and TWA's increased only slightly from 11,452 to 12,415. Percentage participation in charter traffic for foreign air carriers increased from 28 percent in 1957 to 77 percent in 1962; that of Pan American and TWA decreased from 27 percent to 5 percent; and there was a decrease from 45 percent to 18 percent for the so-called Part 295 carriers (including supplementals). It is significant that the gains in total market size have persisted notwithstanding the introduction of economy fares in 1958 and the April 1964 modifications that effected decreases of up to 20 percent in fares for both first-class and economy service.

operated in the various areas, the breakdown for 1963 is shown below:[49]

1963

	Applicants	Joint Intervenors	All Cargo	Foreign Flag	Total
Transatlantic	301	226	45	2,307	2,879
Caribbean, Central America, Bermuda	14	478	21	N.A.	513
South America	—	21	—	N.A.	21
U.S.-Puerto Rico	—	21	1	N.A.	22
U.S.-Honolulu	65	67	14	N.A.	146
U.S.-North Pacific	12	4	—	N.A.	16
U.S.-South Pacific	62	2	4	N.A.	68
U.S.-Alaska	1	5	3	N.A.	8

It is evident from a glance at the tabulation that except for their transatlantic operations the charter flights flown by the supplementals were sparse. By the same token, those of the Joint Intervenors were, for the most part negligible, considering their established identity in the markets and the volume of their individual services.

There are, of course, a host of considerations peculiar to operations abroad that tend to inhibit air service development, not the least of which are problems experienced in obtaining landing rights, the restrictionist tendencies of

[49] Exhibit JI-1110. All 62 U.S.-South Pacific flights under the "Applicants" column were mixed cargo and passenger flights performed by World under contract with Western Electric Co. Charter flights in 1961 and 1962 do not indicate material differences from 1963, but they do reflect the sharply declining participation of Pan American and TWA and the steady rise in the share of the foreign air carriers in North Atlantic charters.

particular foreign countries, the volatility of local political situations, competition from foreign air carriers, and the inadequacy of tourist facilities when judged by American standards. Such considerations are mainly in the realm of the imponderable and they are not of the sort that the Board generally has given decisive weight in determining whether to certificate U. S. flag services. For example, the fact that landing rights may not be in hand has not deterred authorization of services otherwise found required by the public convenience and necessity; and the existence of foreign competition is not to be relied upon exclusively to provide the benefits of competition contemplated by the Act.[50]

The record supports the conclusion that, despite these difficulties, the failure of international charter transportation to develop substantially in areas other than the transatlantic may be due as much to lack of aggressive promotion as to any of the foregoing factors or the historic thinness of the traffic in given markets. However the situation is viewed, the essential fact is that the certificated route carriers are not, and cannot be expected to be, vigorous exponents of charter service. Their primary responsibilities and most lucrative sources of revenue lie with the scheduled services. Although substantial money and effort go into charter programs from time to time, no separate charter divisions are maintained nor do these carriers assign aircraft exclusively to charter service. As

---

[50] See *e.g.*, *North Atlantic Routes*, 6 C.A.B. 319, 322 (1945); *Panagra Petitions*, 9 C.A.B. 325, 328 (1948); *Latin American Air Freight Case*, 16 C.A.B. 107, 112 (1952); *Transatlantic Cargo Case*, 21 C.A.B. 671, 684 (1954); and *Large Irregular Air Carrier Investigation*, 32 C.A.B. 856, 867 (1961).

was candidly stated by Mr. Costello, a witness on the domestic issues for the Joint Intervenors, the certificated

10054

route carriers as a group are not charter specialists and they do not conceive charter movements as their primary role.[51] The testimony of Mr. Montgomery, the Joint Intervenors' witness on overseas and foreign operations, was much to the same effect. With some possible exceptions, a prevailing Pan American policy in the past, if not tantamount to active discouragement of charter operations, has been to sell them as a last resort when its other and more rewarding services fail to satisfy.[52]

The experience of the transatlantic remains as the prime example of what can be accomplished in promoting charter development.[53] There the introduction of group fares,

---

[51] Tr. 755-56.

[52] See *e.g.*, Tr. 511-518. From time to time Pan American has published advertisements extolling the virtues of its economy services in comparison to charters (World 314). While these advertisements may have some purpose in relieving public misconceptions, they clearly carry the inference that Pan American's scheduled services are superior to all charters, including perforce its own. According to press reports, during the pendency of this case, Pan American has increased its transatlantic capacity substantially, an announced purpose being to aid in the solution of the balance of payments problem by promoting foreign travel to the U.S.

[53] This is not to suggest that even now the need in this area is being fulfilled; that question is at issue in the *Reopened Transatlantic Charter Investigation*, Docket 11908 *et al.* As far as this record is concerned, there is evidence of growing passenger resistance to the use of nonjet aircraft on the longer overseas and foreign flights. Several tour operators testified concerning their inability to book jet equipment for areas such as the Caribbean and

which the entrenched carriers foresaw as the answer to group charter movements, admittedly have not served that purpose. The Joint Intervenors correctly point to many differences between the transatlantic market and other areas of the world which might give rise to different results if charter specialists are certificated. Principal among

10055

them are the higher levels of historic traffic in the transatlantic than elsewhere; the more pronounced ethnic ties between Europe and the U. S., which are responsible for a significant portion of the transatlantic charter traffic; and the extreme seasonal peak across the Atlantic which intensifies demand over a relatively short period. These considerations may well mean that traffic development across the Atlantic could not be fully duplicated in other markets, either as to market size or the rapidity of growth, and that the same degree of competition may not be warranted. It has not been demonstrated, however, that they detract significantly from the basic lesson to be learned, which is that international scheduled services and group charter movements can grow and prosper side by side, given the stimulus of competition.

In large measure the future for charter service is interwoven with the prospects for air transportation development generally. Although there are differences between individual carriers and classes of carriers, the domestic and international certificated route carriers generally have

---

across the Pacific, but particularly in the transatlantic market. In 1961 Pan American declined some 455 transatlantic charter requests, virtually all for lack of equipment. As might be expected, the bulk of the requests were in the May-September period, the peak season.

experienced unprecedented traffic growth and profits. An all-time peak of 58.5 billion revenue passenger-miles were flown during calendar year 1964. Between the years ending September 30, 1961 and 1964, their total operating revenues rose from $2.9 billion to over $4 billion and their operating profit position changed from an operating loss of $16 million to a record operating profit of $350 million in 1964. Also pertinent in a broad sense are the general economic indicators which must play a part in stimulating travel. The picture apparent from the record, both in the U. S. and abroad, is clearly one of constantly expanding population,

10056

burgeoning economic development, and trends in other respects favorable to continuing air travel growth.

Perhaps the two most significant keys to realization of a substantial expansion of charter services and air transportation services generally are (1) maintaining, and increasing where possible, the low cost advantage of particular forms of air travel, an advantage that is now characteristic of charter service, and (2) fuller exploitation of pleasure travel. The average American today is more affluent, with more leisure time and greater discretionary income potentially available for travel, than ever before. American families as a unit are sharing in this development, as illustrated by the fact that the percentage of U.S. households having income in excess of $7,000 has grown from 14.3 percent in 1955 to 30.4 percent in 1963. With the typical pyramiding of U.S. individual income, which places the largest proportions in the lower income brackets, reductions in air fares, or even maintenance of existing fare levels while income rises, are bound to open up previously untapped sources of additional traffic.

(10056, 10057)

There is a continuing surge of interest in travel generally by both U.S. residents and foreign citizens, with no significant signs of a slackening trend in the foreseeable future. Passenger use of air services generally is at an all-time high. Expenditures by U.S. residents for foreign travel have increased from $1.4 billion in 1954 to $3.2 billion in 1963, and the number of passports issued and renewed in the same period have more than doubled from 452,049 to 1,055,504, with a further increase to over 1.2 million expected during fiscal year 1965. At the same time, the

10057

number of temporary visitors to the U.S. from foreign countries increased from 457,248 in 1959 to 875,711 in 1963.[54] This latter market should be a prime area for concentration, not only for the resulting economic benefit to American carriers, but also because of the salutary effect that increased travel by foreign citizens to the U.S. can have on the balance of payments problem.

Notwithstanding the tremendous expansion of air transportation, there are still vast areas for future development. Domestically, the automobile remains the principal mode of transportation on trips over 100 miles; in fact, the percentage of Americans using the automobile for such journeys rose from 55 percent in 1955 to 65 percent in 1962. Even more directly in point are the statistics showing that, although travel generally is increasing, 71 percent of

[54] By area, the increases were as follows: Australia and Oceania countries, 20,425 to 34,595 (69.4 percent); Asia (Japan, Hong Kong, and the Philippines), 13,742 to 35,631 (159.3 percent); Europe, 171,657 to 326,454 (90.2 percent); and Latin America (Central and South America, the Caribbean), 251,424 to 479,031 (90.5 percent).

all Americans have never traveled domestically by air. Of the 29 percent that do use air travel about 86 percent represent business travel, 5 percent travel for personal reasons, and only 9 percent are on purely pleasure trips. Further, there is no persuasive reason to suppose that the "huge untapped volume of affinity group charter business" [55] which the Joint Intervenors foresee for domestic development by the supplementals could not, at least in part, be equally exploited for overseas and foreign travel.

10058

In the field of international civil cargo charters, there is a comparative paucity of information on which to evaluate the future. U.S. exports by air to the primary areas of the world continue at a high level, reaching in 1963 a total weight of 218.6 million pounds and an aggregate value exceeding $1 billion. While economic conditions generally are favorable for the continued growth of cargo movements, historically the part played by planeload cargo charters has not been large. Experience across the North Atlantic, which was offered as typical, shows that, although the capacity of modern cargo aircraft ranges upwards of 75,000 pounds, 65 percent of the freight shipments are less than 100 kilos in weight and that those exceeding 1,000 kilos represent no more than 2 to 3 percent of the total. Scheduled freight services are operated on a worldwide basis by combination, all-cargo, and foreign air carriers at relatively low load factors and with substantial unused capacity.

The number of civil cargo charters operated by supplemental air carriers in overseas and foreign markets and

[55] Exhibits JI-R-131 through R-139.

the revenues derived from this source in 1963 are set forth below:[56]

	Capitol	Southern	USOA	Vance	World	Zantop	Reys.
Transatlantic	2	—	—	—	—	—	$ 14,000
Pacific	4	2	—	—	—	—	119,125
Caribbean, Central America, Bermuda	—	218	1	—	—	2	184,699
South America	—	12	—	—	—	—	43,201
Puerto Rico	—	110	2	—	—	—	147,030
Virgin Islands	—	63	—	—	—	—	57,021
Hawaii	—	—	—	—	5	—	31,840
Alaska	1	—	—	2	—	—	11,289
TOTAL	7	405	3	2	5	2	$608,205

10059

Thus the only substantial participant has been Southern Air Transport, which provided such service to the Virgin Islands, Puerto Rico, and the Dominican Republic. At the same time, however, except for the transatlantic services of all-cargo operators, the planeload cargo charters of the scheduled carriers have been negligible in relation to their other transport activities.[57]

The full range of possible explanations for the failure of the market to develop more extensively and rapidly is

---

[56] Excludes combination cargo and passenger flights (Exhibit JI-1014).

[57] In 1963 such flights of combination and all-cargo carriers accounted for revenues of only $158,556 in overseas markets and $2,564,538 in foreign air transportation. The transatlantic accounted for $2,059,803 of the latter total, $1.8 million by all-cargo carriers.

not apparent from the record. As far as participation by the supplementals is concerned, lack of demand and/or promotion, the absence of suitable equipment, and their concentration on military and other readily accessible and profitable activities may have all played a part. However, the die is now cast and those supplementals who are to survive have no alternative but to pursue every conceivable source of charter business available to them. And in spite of the comparative dearth of historic cargo charters by all carriers, the cargo market as a whole is exhibiting rapid and healthy growth.[58] If any of the applicants are to be authorized to operate civil passenger charters in overseas and foreign areas, then coextensive cargo authority is a

natural concomitance. Continued cargo charter authority offers the opportunity to expand a relatively underdeveloped market, it would provide applicants selected with a possible additional source of needed revenue, and it clearly would not cause material injury to existing carriers. The extent of its utility must depend on the vigor and success of sales and promotional efforts.[59]

---

[58] For example, in the year ending January 31, 1965, freight revenue ton-miles for all certificated route carriers rose to 1.6 billion, an increase of 25.3 percent over the prior year—a 21.6 percent increase domestically and 32.8 percent for international and territorial operations. The growth in the latter category for the combination carriers was particularly striking, representing a 39.8 percent increase. Comparing the years ending September 30, total industry freight revenue ton-miles have risen some 64 percent in 1964 compared to 1961, about 70 percent for the certificated route carriers and 33 percent for the supplementals. CAB *Air Carrier Traffic Statistics.*

[59] The insistence of the intervenors on a presently demonstrated and unfulfilled demand for service before it is made available does

(10060, 10061)

All-Expense Tour Charters

Most of the intervenors vigorously oppose any authorization of all-expense tour charters in this proceeding on both legal and policy grounds. Since a determination of the legal issue adverse to the applicants would render discussion of the policy considerations unnecessary, the question of the Board's legal authority will be considered first.

The Board's Legal Power. The crux of the legal problem is whether all-expense tour charters, under which supplemental air carriers would charter aircraft to travel agents who in turn would fill the aircraft by selling all-expense tours to individual members of the public, constitute "charter trips in air transportation" and therefore supple-

10061

mental air transportation within the meaning of section 101(33) of the Act. The Board has not explicitly passed on the question, although it has determined that it possesses the power to authorize split, or less than planeload, charters.[60] In upholding the Board's action on split

---

not square with their own apparent approach to cargo development. Pan American has invested some $111 million and TWA $40 million in convertible jet aircraft, not to meet existing cargo needs but in the expectation that traffic will be developed to fill them. As the witness for the Joint Intervenors explained it, such equipment is not being purchased by U.S. flag carriers "for today or tomorrow. They are being bought with the thought in mind you first make available a service and then go out to sell it." Testimony of Mr. Kellegher, Tr. 693.

[60] *Transatlantic Charter Investigation*, Orders E-20530 and 20531, served March 3, 1964, pp. 35-40 (Appendix A). In that case the Board also, for policy reasons, decided to deny requests for all-expense tour authority, although the matter is still open

charters, which was attacked on legal grounds similar to those now advanced, the Court set the framework for decision here in the following language:

> "We are unable to conclude that the term charter trips has a fixed meaning or that Congress intended to restrict the Board to a definition of one aircraft-one charter. We conclude Congress intended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs and changing aircraft * * * We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." [61]

Notwithstanding the broad latitude given the Board "to evolve reasonable definitions," the intervenors rely upon two principal lines of argument. First, it is contended that the legislative history of Public Law 87-528, which introduced the definition of supplemental air transportation,

10062

demonstrates that Congress itself determined that an all-expense tour charter to a travel agent selling individual

---

pending final action by the President (*Id.* at pp. 31-34; Order E-20776, April 30, 1964). In addition, the Board in its proposal to authorize all-expense tour charters on an interim basis reached the "tentative conclusion" that it had the legal power to do so, but that proposal has been deferred (f.n. 30, *supra*).

[61] *American Airlines, et al.* v. *C.A.B.*, C.A.D.C. No. 18,590; *et al.*, decided March 4, 1965.

space to the general public would not be a "charter" within the statute because such an arrangement is tantamount to individually ticketed travel. In this respect, reliance is placed primarily on rejection by the House and the Congress of a Senate Commerce Committee print which would have defined "charter" specifically to include authorization for all-expense tour charters, and upon statements of both House and Senate managers favoring the intervenors' position.

The second argument is directed essentially to the issues and the evidence. The intervenors attach significance to the fact that the travel agents did not appear as a group in this proceeding and present evidence "as to how, when, and where all-expense tours would be performed, and their qualifications to provide such service." [62] As the Joint Intervenors correctly point out, in all-expense tour charters the main function of the supplemental air carrier would be to provide its aircraft at its published charter rate; the real principals would be the travel agents or tour operators who organize, promote, and sell the tours; and therefore the travel agents in all likelihood would be "indirect" air carriers who require either a certificate under section 401 or an exemption from the certification and other require-

10063

ments under section 101(3) of the Act.[63] Since there are no applications by travel agents for such authority before the Board in this proceeding, the precise identity and re-

[62] Joint Intervenors' brief to the Examiner, p. 6.

[63] Section 401 generally requires air carriers to obtain certificates which may be issued, after notice and hearing, upon Board findings that the public convenience and necessity so require and that the applicant is fit, willing, and able. Section 101(3), however, has a

sources of agents who would sell all-expense tours are unknown, and they did not appear here en masse to disclose their plans and areas of operation, the intervenors conclude that the Board is powerless to make the findings necessary to implement the all-expense tour program urged by the applicants.

Turning first to the statutory meaning of "charter," the official actions of the Senate and House committees processing the bill, the Conference Committee, and ultimately the Congress in enacting the bill do not support the intervenors' position. The version of the bill advocated by the Senate Commerce Committee and passed by the Senate contained a definition of charter which, while generally excluding individually ticketed service offered by an air carrier directly or through a travel agent from the term, made a specific exception for travel agent charters involving all-expense tours. The effect would have been to give supplemental air carriers the statutory right to conduct such charters, and the reason given for the exception was that tour travel "is a very different sort of service from individually tick-

eted transportation." [64] On the other hand, the bill passed by the House limited supplemental certificates to "charter trips" but did not define the term, with the House Committee reporting out the bill explaining that

---

specific proviso for indirect air carriers which states "That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest."

[64] S. Rep. No. 688 (Calendar No. 664), 87th Cong., 1st Sess. 14 (August 8, 1961).

(10064, 10065)

> "* * * authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." [65]

The bill as it left the Conference Committee and as finally enacted adopted the House position (present section 101(33)) and the Conference Report contained no comment on the subject of the definition of charter.[66] The plain import of these various actions is not that the Congress specifically rejected any and all all-expense tour charters as legitimately a part of supplemental air transportation but that it meant precisely what it said in its ultimate enactment, *i.e.*, that the definition of "charter," including the question of whether all-expense tour charters could or should be authorized within the scope of the term, was to be left to the Board.

Some of the statements made by individual members of Congress during the course of the floor debates do indicate a different interpretation. Senator Monroney, a manager of the bill, did not comment on all-expense tours but indi-

10065

cated that the definition of charter was a matter for the Board's discretion.[67] However, three Senators who were on the Conference Committee did mention them and all

---

[65] H. Rep. No. 1177, 87th Cong., 1st Sess. 11 (September 13, 1961).

[66] H. Rep. No. 1950, 87th Cong., 2nd Sess (June 28, 1962).

[67] Congressional Record—Senate, June 29, 1962, p. 11425.

their comments were to the effect that the Board did not have legal authority to define charters to include all-expense tours organized by travel agents.[68] Similar statements were made by two of the House managers of the bill and other representatives.[69]

Although these various remarks serve to becloud the legislative history, they do not, as the Board has stated in a comparable situation, "affect the fact that as reported (and enacted), the law contained no definition of charter and placed no strictures or conditions on the Board respecting its construction." [70] The Court's action in affirming the Board's authority to permit split charters clearly supports the proposition that here, as in that situation, there is "no need to go beyond the legislative enactment to ascertain

10066

the extent of our [the Board's] latitude in construing the statutory term 'charter'." [71] It follows that the Board has ample legal authority to define charter to include all-expense

---

[68] *Id.* at p. 11426 (Senator Cotton); p. 11427 (Senators Scott and Thurmond).

[69] *Id.* at pp. 11460-61 (Representative Williams); pp. 11461-62 (Representative Harris); p. 11462 (Representative Walter); and p. 11463 (Representative Collier). Typical are the remarks of Representative Harris:

> ". . . Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language. . . .
>
> "The Senate . . . proposed to modify the established concept of charter in order to permit carriage, as charter, of 'a group on an all-expense paid tour.' . . ."

[70] *Charter Investigation, supra,* at pp. 38-39.

[71] *Id.* at pp. 39-40.

(10066, 10067)

tour charters to travel agents, provided that in doing so it preserves the fundamental distinction between group carriage and individually ticketed travel.[72]

The various other contentions of the intervenors are without merit. Their net effect would be to impose standards of proof that are clearly not necessary or justified. The classic technique which the Board has used in authorizing indirect air carrier operations is by exemption pursuant to section 101(3) of the Act. This was the method employed in establishing the extensive airfreight forwarder industry, and the Board's power to proceed in this manner has been judicially sustained.[73]

10067

Here, as in the case of the initial authorization of airfreight forwarders, there is no foundation in experience

---

[72] It should be pointed out that Board action in the past refusing to permit charters to travel agents has been based on policy rather than legal grounds. Further, the Board has ample precedent by analogy to surface transportation for permitting all-expense tours through travel agents, for in that field they have been held to be sufficiently cohesive to qualify as "charters" under the Motor Carrier Act. 49 M.C.C. 491 (1949), 52 M.C.C. 373 (1951), 54 M.C.C. 291 (1952), reversed sub nom. *National Bus Traffic Association, et al.* v. *United States, et al.*, 122 F. Supp. 876 (N.J. 1954); and 63 M.C.C. 493 (1955), affirmed *National Bus Traffic Association, Inc., et al.* v. *United States, et al.*, 143 F. Supp. 689 (N.J. 1956), aff'd *per curiam*, 352 U.S. 1020 (1957). The three-judge District Court deciding the *Tauck* case relied in part on the fact that all-expense tour charters were long-established in the motor carrier field before passage of the Motor Carrier Act and upon the absence of any legislative history evidencing an intention to prohibit them, factors that are not present under the Federal Aviation Act. However, a fair reading of the decision does not indicate that these were the decisive considerations.

[73] *Air Freight Forwarder Case*, 9 C.A.B. 473 (1948), aff'd *American Airlines, Inc.* v. *C.A.B.*, 178 F.2d 903 (C.A. 7, 1949).

by which to judge completely the full potential and utility of all-expense tour charters. If authorized, they will be largely promotional and experimental, and findings concerning need for authorizing the participation of travel agents and the points or areas for operation of such charters necessarily must be made in general terms.[74] The Board need not find particular travel agents qualified in the certificate sense of fitness, willingness, and ability, which is not a statutory standard for exercising the exemption power; indeed, the plain language of 101(3) does not even require that the findings necessary to support an exemption, which are those of "public interest," must be made upon an evidentiary record developed after notice and hearing. As later appears in more detail, the record as a whole

---

[74] In the *Forwarder Case, id.*, the Board said,

> "The basic issue, whether air freight forwarders should be permitted to operate, presents many difficult and perplexing questions on which the parties have taken strongly conflicting positions * * * Much uncertainty is injected into the problem before us by the fact that no empirical basis exists for a determination of the important issues involved. There are no statistical data available relating to actual air freight forwarder operations and many of the problems before us can be solved only on the basis of actual indirect air carrier operating experience of the type here proposed." (p. 498).

Again, on the question of scope of authority:

> "On the basis of the evidence in the record herein it would be extremely difficult and perhaps impossible to fix a route pattern, either by points or areas, in the usual sense contemplated by section 401 of the Act. Although need has been demonstrated for air forwarding service to and from certain areas and between certain points, any attempt to fix an overall pattern is premature in view of the lack of definitive data, due largely to the fact that the air forwarding industry, on a common carrier basis, has not existed up to the present time." (p. 499).

will support the conclusions that a limited experiment with all-expense tour charters by some of the applicants is required by the public convenience and necessity and that an exemption from the certificate and other requirements of the Act for travel agents, to the extent necessary to permit their participation in such a program, is in the public interest. No more is required for a lawful exercise of the Board's power.

Existing All-Expense Tour Services. The proposals in this case for all-expense tours to travel agents would introduce an innovation into the American air transportation system. While all-expense tours are now promoted and sold in conjunction with U. S. scheduled air services, none has been developed through the vehicle of charters to travel agents who in turn market the tours directly to the public, and none offers the price savings on the cost of air transportation that could be effected by assessing the individual traveler basically only his pro rata cost of the charter.

The present all-expense tour services, which are all tied to the higher individual or group scheduled air fares, are of two general types. The first is the advertised all-expense air tour. As it exists under applicable IATA resolutions, the all-expense air tour is a round or circle trip arranged and promoted with tour literature. In addition to the point-to-point air transportation, it must provide sleeping or hotel accommodations for the duration of the tour and may include other ground services such as transfers, sightseeing, car rentals, etc. The ground features must amount to not less than 20 percent of the air fare or $15, whichever is greater, and the price for the ground arrangements must appear in the tour literature so that the customer may com-

pare the cost of various tour packages. With some differences, the same general type of tour is available domestically.[75]

The second type is the domestic independent air tour which has no counterpart internationally. In this instance, no tour folder is required and the tour is tailored to the desires of the individual traveler, provided that the ground arrangements include the same elements as the advertised all-expense air tour and that the tour includes at least two noncontiguous cities. A minimum dollar requirement is also established for the ground features, generally 15 percent of the air fare. Both domestically and internationally, travel agents are paid a 10 percent commission on the air fare where a tour is involved as opposed to the usual 5 percent and 7 percent for domestic and international point-to-point air travel, respectively.[76]

Considerable time, effort, and money are devoted to the development of all-expense tours in both domestic and international air transportation. Individual carriers, of course, utilize their own sales staffs, company-produced literature, and the services of agents to promote tours as

---

[75] The governing ATC resolution, like that of IATA, requires publication of a tour folder that makes full disclosure as to ground services and price. However, unlike the IATA carriers, the domestic carriers are prohibited from bearing any costs in connection with the preparation and printing of tour folders, although they do utilize their own promotional materials.

[76] It would appear that, at least in the international field, retail agents derive roughly an additional 10 percent on the ground services from the entities performing them or from the tour operator producing the package. The tour operator profits primarily from the volume arrangements he makes with respect to ground services for which he is in effect a wholesaler, with the right to markup the cost of the ground package as may be necessary.

well as other types of travel. An additional sales weapon is the tour manual. The most significant of these is the consolidated tour manual, a 353-page publication first developed in 1961 and used by all domestic trunkline carriers except American. It lists over 300 tours of all descriptions available to a great variety of domestic points and some foreign areas such as the Caribbean, Bermuda, the Bahamas, Mexico, and Central America, and the total distribution of each edition approximates 10,000 copies, including copies sent to the some 5500 approved travel agent locations in the United States. Internationally, the carriers are free to participate in the development, printing, and purchase of the tour folders for the tour packages that are ultimately to be retailed. An international tour operator is required to print a minimum of 5,000 copies of a tour folder, but usually printing runs to 50,000 copies or more with worldwide distribution. In the case of Pan American, for example, distribution may be made to as many as 15,000 sales outlets.[77]

While the facts demonstrate that the all-expense tour market as it exists today is far from a neglected source of

---

[77] The dollars expended for promoting tours, at least by domestic carriers, appear to run higher than for general point-to-point air transportation. The domestic carrier component of the Joint Intervenors estimated that for 1963 about 6 percent of total all-expense tour revenues were spent in promoting tours whereas total domestic advertising and publicity expense ran about 3 percent of total passenger revenues. The fragmentary information that is available indicates that the dollar amounts expended internationally for the same purpose are more modest. For example, in 1963 they totaled for Pan American $258,000 (Hawaii, Alaska, and Pacific) and $357,000 (Latin America); Northwest, $93,000 (Hawaii, Alaska, and the Pacific); United, $100,000 (Hawaii); Braniff, $99,000 (Latin America); American, $8,000 (Mexico); and Western, $200,000 (Mexico).

traffic, it is clearly apparent that such traffic is nowhere near its true potential. It is to be remembered that of the

10071

29 percent of Americans that fly domestically, only 9 percent are on purely pleasure trips whatever the mode, type, or class of air travel they use. Utilizing the best estimate available, 1963 sales by travel agents amounted to some $611 million for the domestic Joint Intervenors (excluding Hawaii and Alaska), with but 9 percent, or $56 million, representing the total volume of all-expense tour sales. Internationally, for the same year the relative percentage dollar volume of all-expense tours for even the most dependent carrier did not exceed about 15 percent.[78]

Existing all-expense tours, like those which might be offered and sold on a charter basis through travel agents, have appealing features for passengers of a particular temperament, including relative economy of price, the payment of one sum for the entire package, the companionship of likeminded tourists, relief from the burdensome detail of reservations, avoidance of baggage transfers, etc. In the international field there are additional advantages, such as minimizing the necessity for coping with the often cumber-

[78] To illustrate, the amounts received from the carriage of all-expense tour passengers and the relative percentage of relative passenger revenue were as follows: Pan American, $17.9 million, or 13.6 percent of passenger revenues (Pacific and Hawaii), $10.3 million, or 8 percent (Latin America), and $153,000, or 3.5 percent (Alaska); Northwest, $2.67 million, or 7.6 percent (Pacific, Hawaii, and Alaska); and United, $5 million, or 15.1 percent (Hawaii). In the case of Pan American at least, a large proportion of this traffic—possibly as high as 50 percent—consists of "FIT" or foreign independent travel passengers who independently select pre-packaged tours or have them custom-built to their specifications. This traffic should not be materially affected by the all-expense tour charter.

some customs procedures and the difficulties of unfamiliar languages and currencies. Conceivably all-expense tour charters could stimulate additional tour passengers by offering some further cost advantage over present tours on the land portion because of block booking of the surface components of the tour, although theoretically at least these

10072

advantages are equally available today since they are not dependent on the manner in which the tour is marketed but upon the development of sufficient traffic to warrant volume discounts.

There is no way of ascertaining with certainty the full extent of reduced costs for the tour traveler that could be realized from the lower air fare, which is the real advantage of the all-expense tour charter. Much depends on considerations such as the level of the individual and charter rates, the type of equipment involved, and the class of scheduled air service to which the comparison is being made, as well as the more general factors of promotion and development. Even accepting all of these qualifications it seems clear that the price differential would be of sufficient importance, particularly on long haul operations, to develop substantial new traffic.[79] In view of the general affluence of the Ameri-

[79] Some examples of record based on existing air travel costs will illustrate the point. Assuming the use of jet equipment and the round trip cost, the difference between the pro rata charter rate and the lowest individual scheduled fare is about $148 between Los Angeles and New York, $65 between New York and Miami, and $14 between Los Angeles and Las Vegas. The Los Angeles-Tokyo all year round trip economy fare on the scheduled services is $783 compared to $356 for the pro rata jet charter (with no ferry mileage), a difference of $364. While the total cost of the entire package may still be large because of the constant level of the ground expense, the savings on the air fare alone are nonetheless signifi-

can society, the persistent economic growth both here and abroad, the prevailing propensity for travel generally, and the other factors previously considered that demonstrate a favorable climate for continued development of all air transportation services, there is little doubt that any sound program for exploiting the pleasure market by all-expense tour charters which offer the stimulus of lower fares faces a promising future.

10073

The British Experience. Inclusive tour (IT) charter services have long been established on the European continent where they have enjoyed wide public acceptance and have exhibited remarkable growth. While they are used extensively and successfully in countries such as Germany and Sweden, it is the analogy afforded by the British experience on which the applicants mainly rely and concerning which the evidence is most complete.[80]

Under the British system the fulfillment of air transportation needs is the responsibility of British Overseas Airways and British European Airways (BEA), the state-owned airline corporations, as supplemented by the privately owned independent British air carriers. The IT charters operated by the independents received their initial impetus in the early 1950's when removal of currency restrictions made pleasure travel abroad possible for the

---

cant enough to dip further into the income strata for new customers. They are also particularly significant when related to the costs of a family vacation, since the American family now averages out to some 3.65 persons.

[80] The British term "inclusive tour" is for all practical purposes synonymous with "all-expense tour" in American parlance and the terms are hereafter used interchangeably.

British. During the balance of the decade the IT charters were of relatively little competitive significance to BEA, the state carrier primarily concerned. They were authorized by the Air Transport Advisory Council under guidelines established by the Minister of Civil Aviation and were generally confined to situations where there was no existing scheduled service or no material diversion would occur. The Council's actions were taken in consultation with BEA and a negative response from the latter normally meant denial of the permit application.

10074

The era of rapid development began with implementation of the Air Transport (Licensing) Act of 1960 which established the Air Transport Licensing Board (ATLB) as the aviation licensing body, subject to a right of appeal to the Minister of Aviation. Since 1960 the growth of IT charter passengers carried by the British carriers has been substantial and persistent, as shown by the table below:[81]

1960	199,000
1961	344,000
1962	386,000
1963	494,000
1964	700,000 (est.)

This growth has been accompanied by a similar expansion in the number of such passengers transported by foreign flag carriers, which have risen steadily from 50,000 in 1960 to 132,000 in 1961, 200,000 in 1962, 308,000 in 1963, and an

[81] The figures given as to both British and foreign flag traffic are for passengers outbound from Great Britain only and should be divided in half to arrive at the number of round trip passengers.

estimated 350,000 in 1964. The authorizations granted to foreign flag carriers apparently are issued by the Minister of Aviation solely on the basis of reciprocity, without hearing, and in a manner that reserves to them roughly 40 percent of any given market.[82]

10075

From the standpoint of the passenger the British IT's are not materially different from the all-expense tours previously discussed, which have their principal appeal in the lower fare, an all inclusive lump sum payment, and the relief from worrisome detail. The usual IT is of two weeks' duration and includes round trip point-to-point air transportation, city-airport-hotel surface transportation, some sightseeing, and hotel accommodations with meals. At least in the past, they have been operated by the independents with the older types of piston equipment at a level of passenger service roughly equivalent to the basic IATA economy service. Unlike the U. S.-foreign markets and some of the longer haul domestic movements in the U. S., there is no present indication of a marked passenger resistance to the use of other than pure jet equipment.[83]

---

[82] Within the category of British carriers, IT charters are not operated solely by the independent airlines; they can be and are operated with ATLB approval by the British scheduled carriers between points which they serve on their scheduled services. Also, the scheduled carriers have an ITX or tour basing fare which allows them to carry IT passengers at a reduced rate on their regularly scheduled services without specific permission. The ITX fare came into more extensive use in 1959 when IATA permitted a substantial reduction in the rate level. Finally, there is a hybrid type of service in which the scheduled carriers may transport ITX passengers exclusively on given flights, also with ATLB permission.

[83] The average one-way distance for the British IT charter flight is in the neighborhood of 900 miles. They are generally operated

(10075, 10076)

There are basic differences between the British IT charter passengers and those using the more expensive scheduled services, particularly in terms of age, income level, and occupation. The typical IT charter passenger is from the working class, of lower to middle income, and considerably younger. In a word, the IT charter passenger is likely to be the young and budget-conscious traveler to whom price, and limited tour duration to meet business vacation periods, may become the vital considerations.

The overwhelming passenger preference has been for "stay-put" or "single centre" tours to the "sun spots," *i.e.*, vacation trips on which the principal purpose is not sight-

10076

seeing but to settle at basically one point to relax and enjoy the sun and the sea. Thus, the majority of the IT's take place in the 20-week peak May to October summer season and are to points in the warm climates, such as the Spanish Balearic Islands (notably Palma on Majorca) and other Spanish and Italian resort locations on the Mediterranean and Adriatic seas. As in the transatlantic passenger charter market, in recent years the season for IT charters has had a tendency to broaden. In addition, more extensive geographical coverage is being experienced because of the increased popularity of tours to other areas that include Portugal, Greece, Yugoslavia, and the Holy Land.

Brief mention should be made of the British regulatory system. Several types of licenses for IT charters are is-

---

by the carriers on a "back to back" basis, often with more than one group aboard the airplane, so as to eliminate or at least minimize the ferry mileage that would otherwise be involved in one-way hauls and the positioning of aircraft for future movements.

sued varying from a single flight to flights over a number of years, with the most usual being a license for a series to be operated over one specific summer season. As a practical matter, an application for ATLB approval must be made 10 to 12 months prior to commencement of the flights, and the application must be joined in by both the operating carrier and the tour operator or operators concerned. Hearings are held before the ATLB, usually at the same time on all applications involving a common destination. Various economic data are considered, particularly those bearing on past market experience and the general issues of need and wasteful duplication or material diversion that may result from particular authorizations. The financial fitness of the operating carriers is scrutinized and there is a growing tendency to inquire into the same question as it relates to the tour organizer, although no specific condi-

tions are imposed in an effort to guarantee the financial responsibility of the latter. There is provision in the British law for ATLB sanctioned variations from the terms of licenses previously granted should they be warranted.

Unlike the American system of publicly filed and published tariffs, the price charged the tour operator by the air carrier for charter of its aircraft is a private, negotiated commercial arrangement.[84] In the licenses it grants the ATLB sets a minimum price that can be charged the passenger for the inclusive tour, which tends to become

[84] Because of this fact it is difficult to ascertain the cost differential for charters versus scheduled service. However, the witness from Caledonian did state, in speaking of the differences in air fares, that it would "be roughly 20 percent cheaper to take a charter holiday than a scheduled holiday." (Tr. 89).

the total IT package price. Almost without exception the price so established is the IATA fare floor, *i.e.*, the total charge to the passenger shall not be less than the lowest published IATA round trip fares between the points to be served on the day and at the time of flight.[85]

The tour operator (or a consortium of tour operators) is the real motivating force not only in the preapproval planning stages of the IT's but also in their subsequent promotion and sale. The functions of the carriers are restricted to furnishing the aircraft and related operating responsibilities. The carrier usually receives a down payment upon signing a contract with the tour operator and thereafter installment payments are made up to the time

of flight. The wholesalers employ the customary promotional tools, including descriptive brochures and perhaps some general advertising, and market the tours either through their own outlets or by using retail agents who receive a 10 percent commission. No commissions of any kind are paid by the operating carrier.

All factors considered, it is clear that the low cost British IT charters have been highly successful in opening up a sizeable new traffic market of persons not previously using air service, to the primary benefit of the low or middle income individual who would not otherwise fly. This is the firm opinion reached by the British regulatory authorities and other European bodies having occasion to

[85] A host of other details may be specified in the licenses issued, viz., frequencies, the period for operation of the IT charters, aircraft type and configuration, duration of stopovers where more than one "centre" or point is involved, etc.

deal with the subject.[86] It is also demonstrated by the uncontroverted testimony of the witness from Caledonian, a British independent carrier, who estimated that 25 to 40 percent of its IT passengers were first-time travelers.[87] And even the BEA witness for the Joint Intervenors expressed no disagreement with the proposition that the principal beneficiaries of the lower fares offered by "both the inclusive tours and the ITX fares, are those newly

10079

generated low income people who would not otherwise travel * * * ."[88] The ultimate conclusion to be reached was well put in a statement of an economic advisor to BEA when he wrote, in referring to the some 600,000 passengers carried on the inclusive tour charter service of the British private airlines in 1962:

> "* * * For the most part these were passengers who would not have travelled by air on normal scheduled services. They were persuaded to fly by the attractive prices and great convenience of the packaged holidays offered. The real importance of inclusive tour services to British civil aviation lies in the fact that

---

[86] Illustrations can be found in the ICAO study of inclusive tour services in international air transport, statements of the British Air Transport Advisory Council in 1957 and 1958, and in the subsequent pronouncements of the ATLB.

[87] The same result often flows from types of charter services other than the all-expense tour. For example, it was the experience of World Airways in its 1963 Hawaiian charter program that about 40 percent of the participating passengers had not traveled by air previously. Also, in World's single entity sales incentive program for Chevrolet, 40 to 50 percent of the passengers had never flown before and about 70 percent had not been aboard a jet aircraft.

[88] Testimony of Mr. Collingwood, Tr. 1419.

(10079, 10080)

> a very large number of people have been converted into air travellers through the promotional efforts of the organizers of air tours. In this way, the financial and social boundaries of the air travel market have been greatly extended." [89]

Moreover, there has been no convincing showing that the IT charter development has had any material adverse impact upon the scheduled carriers. Expressions of opinion by British and European expert study groups and regulatory authorities concerned with the question range from the position that the IT's have not been necessarily harmful to the scheduled services to the conclusion that they have redounded affirmatively to the benefit of the scheduled carriers by serving as the forerunner of new scheduled services, by stimulating new traffic which ultimately returns as scheduled airlines business, and the like; none, however, has found them to have been unduly detrimental.[90]

10080

And the efforts of the Joint Intervenors to show significant injury to BEA from the competition of the independents

---

[89] Statement of Stephen Wheatcroft, Exhibit W-605.

[90] Although the effect that the introduction of new travelers to air transportation through the IT charter will hold for the future is not precisely measurable, all carriers apparently would agree that at the minimum it is a likely source of future traffic that is to be cultivated. As the Joint Intervenors in the domestic field recognize, "* * * the domestic carriers look upon all-expense tours as a way to promote first-time travel to resort and tourist areas with the hope and expectation that the passenger will return to this location at a future date, utilizing the ordinary individually ticketed service of the carriers but not necessarily travelling on a formal tour program." (JI-2000, p. 3).

are not persuasive.[91] The current British Government, although acknowledging that the IT charter services may have had some effect on the scheduled carriers, has been unwilling to apply additional restrictions on the IT charters that might impede their continuing development.[92]

---

[91] The Joint Intervenors construct this argument on the basis of a decline in BEA's traffic between London and resort points where it competes with independent IT charters, particularly London-Palma where BEA's tourist passengers declined 7 percent in 1964 from the prior year as compared to a substantial rise for the independent IT charter operators. However, when the total U.K.-Palma market as operated by the British and foreign carriers is considered, it shows that BEA's traffic has remained static while the total traffic for all carriers has shown constant and healthy growth. Whether BEA's declining participation is due to domestic and foreign competition or factors within its control is not apparent. In any event, when the Palma IT applications were acted upon by the British authorities for the 1965 summer season, the claims of injury by BEA were rejected with the finding that "* * * the grant of these licences would not of itself have a major detrimental effect on the scheduled services." (Exhibit JA-9, p. 6).

It should also be noted that the IT charter operations of the independents have not unduly affected BEA's ability to provide its air transportation services generally. Its total international passengers have risen steadily from 1.56 million in 1960 to 2.35 million in 1964, and its operating profit for the year ended March 31, 1964, reached a five-year high of 3,030,007 pounds. The contention that BEA could have effected lower rates on other parts of its system but for the IT charter competition of the independents is entirely speculative and without factual foundation in this record.

[92] Statement of Mr. Roy Jenkins. Parliamentary Debates (Hansard), House of Commons, Official Report, vol. 706, no. 59, cols. 1186-88, February 17, 1965. This statement is a reflection of the general European attitude favoring IT charters. Thus the 1964 report of the European Civil Aviation Conference study group states that one of its basic purposes was consideration of the principles that would govern such charters "with the object of establishing the maximum possible liberalization of this type of traffic * * *." (Exhibit JI-R-1152, p. 2).

The opposition of the intervenors to equating any favorable inferences from the British experience with the likely potential for American all-expense tour charter services is detailed and vigorous. The intervenors would divide the British history into two parts—before 1960 and post 1960. They do not quarrel with the success of the initial period for, they say, there was orderly regulation that confined IT charters within reasonable limits to essentially new and nondiversionary services. After 1960, however, the intervenors assert that there was a collapse of the regulatory process, with few, if any, brakes on IT charter services even over routes competitive with the scheduled services. They attribute this change to (1) virtually automatic and unlimited entry into the markets by foreign flag competitors, and (2) overly generous authorizations for British operators, granted on the theory that denials would not afford protection for the scheduled services but would simply drive the charter business to the foreign carriers.

According to the intervenors, the result has been material injury to the scheduled carriers, a contention already considered and rejected. From the standpoint of the public, they raise the specter of the uncontrolled travel agent free to prey upon the public with resultant carrier and tour operator failures, passenger strandings, and similar consequences. Finally, the intervenors allege that the IT charter traffic does not represent a new market which would not have otherwise traveled by air but one which the scheduled carriers themselves would have developed in due course.

None of these contentions detracts significantly from the demonstrated public appeal, utility, and promotional value

of the low cost British IT charter. The British admittedly have had difficulties occasioned by mounting foreign com-

10082

petition; however, this consideration does not go to the intrinsic worth of the IT charter but reflects a governmental problem to be solved by governmental means. Further, the implications of injury to the British traveler are exaggerated. So far as appears from this record, there has been only an occasional failure of a financially marginal British carrier and business failures of travel agents have been relatively rare. In any event, in view of the requirement for continuing fitness placed on supplemental air carriers by the Act and the Board's power to condition authority so as to assure travel agent financial responsibility, the Board has ample means to provide protection for the American public from any such eventualities.

Whether the present levels of popularity and extraordinary development of British IT travel would have been reached in time had the scheduled carriers been left to their own devices is entirely a speculative question to which there is no ready answer. As has been seen, the great preponderance of British and European opinion would indicate a negative response. However that may be, the facts are that the market is now established and flourishing and that the sparks which ignited the movement were the efforts of travel agents and the independent IT charter operators. At the very least, these operators provided the competitive spur that hastened the development of a service found useful and beneficial by the British public.[93] This

[93] This point was made by the ATLB in its decision authorizing increased capacity for the 1965 season in the Balearic Islands

(10082, 10083)

in itself is a substantial and persuasive element of the public interest.

10083

Split Charters

In contrast to the voluminous data concerning all-expense tour charters, there is little information of record with respect to split charters. No unanimity exists even among the applicants on the need for them or their usefulness, although a majority favors split charters as an adjunct to other charter authority which successful applicants may receive as the result of this proceeding. Also, there is a disparity of views on whether, if granted, the right to charter less than planeload movements should extend to one-third or one-half an aircraft or be described by some numerical limitation on the size of each participating group.

Actual operating experience with split charters has been very limited. Two supplemental air carriers—Capitol and Saturn—received such authority for traditional pro rata and single entity passenger charters in time for the 1964 transatlantic summer season as the result of the Board's decision in the *Transatlantic Charter Investigation.* However, split charters were flown only to Luxemburg by both carriers and to Brussels by Capitol. None was operated to the more popular destinations in England and France, since split charters are not recognized by IATA and the necessary landing or uplift rights could not be obtained.

---

market, where it said: "The charter operators and their associated tour organizers have by their efforts developed a mass market which the scheduled services, left to themselves, would have taken much longer to develop." (Exhibit JA-5, p. 2).

In the *Charter Investigation* the Board determined that the vast increase in aircraft capacity has deprived many small affinity groups, otherwise charter-worthy, of the opportunity to participate in transatlantic travel because they are unable to fill an entire aircraft. As the Board recognized there, and as shown by this record, group fares generally limited to 25 passengers or more have not provided

10084

an effective substitute. The Board found no likelihood of significant adverse effect on the scheduled carriers and concluded that "we are unwilling to withhold from this part of the potential air transportation market the advantage of transatlantic charters solely because of increases in the size of equipment." [94]

The same reasoning fully supports a similar conclusion here. Split charter rights for pro rata and single entity charters are potentially a valuable type of authority which can be used by the supplementals to broaden the markets available to them and to increase their operating flexibility by combining their passenger loads. Such authority also benefits the public, and in the hands of the supplemental air carriers would not have any significant competitive impact on the passenger carriers. And if, as some of the intervenors contend, split charters prove to be of little practical utility, the scheduled carriers have nothing to fear from their authorization.

The more difficult question is the number of passenger groups which should be permitted to be carried aboard the same aircraft. In the *Charter Investigation* the Board

---

[94] *Transatlantic Charter Investigation*, Orders E-20530 and 20531, March 3, 1964, Appendix A, p. 32.

imposed a two-group limitation. It noted that the supplementals were then using piston equipment across the Atlantic and that the split charter two-group limitation would involve individual groups of at least 40 passengers on the basis of that equipment. A realistic assessment of the

10085

question on this record favors permitting three groups per aircraft, with the proviso that each group shall be comprised of 40 passengers or more. As a practical matter, this would mean continuation of planeload movements when the smaller piston aircraft are used. However, three of the operating supplementals who are applicants here now possess long range, high density pure jets which can seat upwards of 200 passengers in economy configurations, with more jet aircraft being received or on order. A three-group limitation with the additional provision for minimum group size would be consistent with all of the objectives which the Board sought to achieve by its decision in the *Charter Investigation* and would, at the same time, give due recognition to the fact that the era of the pure jet has, in fact, arrived for at least some of the supplemental air carriers.[95]

While some arguments can be made for also permitting split charters involving use of the same aircraft by dif-

[95] On brief the Joint Intervenors intimate that the Court's decision in the *American* case (f.n. 73, *supra*) might somehow prevent the Board from increasing the number of participating groups from two to three. While it is true that the matter before the Court involved only the charter of one-half an aircraft, there is nothing in the Court's decision which would preclude the Board from adopting a three-group limitation upon appropriate findings that such action falls within the charter concept and is required by the public convenience and necessity.

ferent tour groups formed by different tour operators, the possible benefits are outweighed by the disadvantages. As indicated, the essence of the decision in the *Charter Investigation* on the split charter issue was concern for the smaller affinity passenger groups which, with charters limited to planeload movements, were being substantially disadvantaged because of the great increase in aircraft size. In all-expense tour charters, however, there is no affinity requirement; the travel agent may sell tours indiscriminately to individual members of the public who have no necessary relationship to each other except for their

10086

desire to take the tour. Thus the fundamental justification for split charters disappears when related to all-expense tour charters. Further, although there is no indication that the impact would be crippling in any meaningful sense, it is true that such an extension of the split charter concept would increase the diversionary consequences, particularly for those carriers most heavily dependent upon resort type traffic. In addition, permitting the participation of several agents and of different groups of tourists on the same aircraft movement certainly would be more conducive to sales of individual travel in the guise of charters than would be true with planeload operations.

Split charters do not now exist in the cargo field and no convincing reasons have been advanced in their favor. If restricted to planeload movements, cargo charters are basically nondiversionary, for little has been accomplished in this area, and penetration by the supplementals would represent successful exploitation of what is now a minor market. Splitting the loads to be carried, however, could

materially increase their significance, particularly in the domestic field where concerted use of the smaller transport aircraft would reduce the required size of individual shipments with some effect upon the scheduled all-cargo services. In addition, it is likely that the primary impact would fall on the all-cargo carriers which as a group have not shared proportionately the recent prosperity of the combination passenger-cargo carriers and legitimately may claim more reason for protection.[96] Since the possibilities

10087

for real utility of split charters have been shown only as to the passenger field, the balance lies against their extension to cargo movements.[97]

---

[96] For the year ended September 30, 1964, two of the three domestic all-cargo carriers showed net losses before special items. Airlift International had a loss of $875,000 and Slick Airways a loss of $301,000 while the Flying Tiger Line showed a profit of $982,000. In international and territorial operations Seaboard World Airlines and Airlift International had net income before special items of $2,810,000 and $240,000, respectively, while Aerovias Sud Americana (not presently operating) experienced a loss of $425,000. CAB *Air Carrier Financial Statistics.*

[97] On brief the Bureau opposes the grant of any split charter authority, pointing to difficulties which might be experienced in obtaining charterers with compatible space requirements, destinations, etc., those stemming from a failure of one charter group to honor commitments, and the creation of an atmosphere possibly conducive to violations. These considerations are present in varying degrees with respect to all charter operations, and many are controllable as a matter of business judgment or through the imposition of appropriate restrictions. In any event, there is no evidentiary basis for supposing that they would reach unmanageable proportions with respect to split charters. In order to alleviate some of these problems, the Bureau suggests as an alternative the possibility of permitting two or more groups to combine for chartering an aircraft, with a requirement that the charter stand or fall as a unit. This approach would reduce the carriers' flexibility,

IMPACT ON THE CERTIFICATED ROUTE CARRIERS

By the nature of things, this case permits little in the way of specifics concerning the precise competitive effects of the proposed continuation and liberalization of supplemental air carrier authority. No empirical basis exists for complete judgment, there are few concrete proposals by the applicants, and little is known concerning such elements as point pairs to be served, predicted levels of operations, frequencies to be operated, prices to be charged, or equipment to be utilized.

Despite these difficulties, two efforts were made to forecast the probable future civil charter market, one by the Joint Applicants[98] and the other by the Bureau. The Joint Applicants, relying principally on managerial judgment, confined themselves to a prediction concerning future civil

charter passenger revenues for the supplemental industry. Working from an assumed 1965 passenger revenue level of $23.6 million with no change in present authority, for a future year they forecast total civil charter passenger revenues for the supplementals of $26 million, allowing a 10 percent increase for permanent certification alone; with an additional 40 percent if both permanent certificates and all-expense tour charter authority are granted, the total reaches $36.5 million; and finally, there is a third forecast of $39 million, representing 50 percent above the level of

---

and to the extent that the Bureau's concern reflects a practical problem, there is nothing to prevent the carrier from negotiating and entering into commitments only on this basis.

[98] American Flyers, Capitol, Modern, ONA, Saturn, Southern, TIA, and Zantop.

permanent certificates alone if permanent certificates, all-expense tour charter authority, and split charter authority are granted.

On the other hand, the Bureau developed its forecast on the basis of supplemental air carrier participation in the total 1963 charter market plus allowances for normal growth and for stimulation that would result from split charter and all-expense tour charter authority, the latter largely predicated on the European experience. In this way the Bureau arrived at total supplemental civil passenger charter revenues (with all-expense tour and split charter authority) of $19,140,000 for 1965 and $30,270,000 for 1967. Adding civil charter cargo revenues of $2,596,000 in 1965 and $3,294,000 in 1967 the Bureau's forecast of the portion of the total civil charter market available to the supplementals aggregates $21,736,000 and $33,564,000 for 1965 and 1967, respectively.[99]

While there are substantial areas of pure judgment involved in each forecast, they represent the most reliable data of record. The Bureau's estimate is not only within the realm of reasonableness but it may well be overly con-

10089

servative. The civil contract and charter revenues of the supplementals already attained a level of $25,240,000 in the year ended September 30, 1964 without the stimulus of permanent certification, all-expense tour charter authority,

[99] The Bureau also predicted that total military cargo and passenger revenues for the supplementals would reach $89,533,000 in 1967, a 24 percent increase over those actually reported for the year ended September 30, 1964 ($71,865,000). This portion of the Bureau's estimate is unquestioned and appears fully justified on the basis of past experience.

and, for the most part, without passenger rights in foreign air transportation and split charter privileges. The Bureau's 1967 total forecast civil charter revenues of $33.5 million are some $8.3 million in excess of actually experienced levels, or an annual accretion of about 11 percent spread over an approximate three-year period. Even if some leveling off in the supplementals' growth pattern should occur, it is probable that this forecast will be met and exceeded, considering the new authority included in the Bureau's assumptions and the supplementals' historic rate of development.[100]

However the evidence is viewed, it is clear that continuation and some expansion of the supplementals' authority will not produce significant, much less dire, consequences for the certificated route industry. The 1963 total of some $19 million in civil charter passenger revenues for the domestic trunks and foreign and overseas combination carriers represents a minor portion of their total transport revenues, and no material growth pattern in the extent of their contribution is evident or reasonably foreseeable. Although there are variations between individual carriers, the scheduled industry, without appreciable reliance on the civil charter dollar, is passing through the greatest traffic expansion and increase in operating revenues in its history

—a period also characterized by healthy load factors, constantly improving break-even load factors, and substantial rates of return on investment. Operating profits have

[100] As shown by Appendix C, the civil contract and charter revenues of the supplementals grew approximately 15 percent in 1962 over 1961, 61 percent in 1963 over 1962, and 69 percent in 1964 over 1963.

more than doubled in each successive year in the 1961-1964 period in reaching the present industry total of $350 million, and operating revenues increased about 12.5 percent in 1962 over 1961, 8.7 percent in 1963 over 1962, and 16 percent in 1964 over 1963.[101] The certificated route carriers recorded their biggest gains in the years 1962-1964 which was also the period of the greatest growth for the supplementals. Further, the experience of the transatlantic has demonstrated the ability of the scheduled services to grow and prosper notwithstanding intensive competition in the charter field from both supplemental and foreign air carriers. Under these circumstances, and considering that a significant percentage of the supplemental charter revenues—both from traditional planeload charters and all-expense tour charters—would represent newly generated traffic, in all likelihood the impact of future increments in supplemental air carrier revenues will be largely absorbed by growth and cause little, if any, change in the relative positions of the certificated route carriers and the supplemental air carriers in the total air transportation system.[102]

---

[101] Appendix D.

[102] Numerous scheduled air carrier intervenors have presented individual pleas of special competitive impact from supplemental past and proposed operations, notably among them being Mackey, Panagra, Trans Caribbean, and eight local and short haul carriers (Allegheny, Lake Central, Hawaiian, Ozark, Pacific, Piedmont, Southern, and Trans-Texas). However, the evidence does not justify the conclusion that any would be significantly affected by the type and extent of authority being recommended herein. As far as the all-cargo carriers are concerned, neither Aerovias nor Slick participated in the proceeding and Airlift International and Flying Tiger, although formal intervenors, make no claim of undue diversion and introduced no evidence. As is evident from the prior discussion, actual 1963 results indicate no material injury to Seaboard, the transatlantic air cargo carrier.

In the final analysis, the nub of the intervenors' resistance to any expansion of supplemental air carrier authority is their opposition to the all-expense tour charter proposals, and even here, the primary concern is not the potential price competition represented by the lower fares available with charter transportation. As the Joint Intervenors candidly put it, "* * * it is not just, and, indeed, not even primarily, the 'cut-rate' feature which will occasion the massive diversion which the trunklines anticipate if the supplementals' proposal is adopted. It is the supplemental-travel agent tie-in which will accomplish this result." [103]

This contention rests on a convolution of arguments. The Joint Intervenors point first to the degree of reliance by the scheduled industry on passenger sales by travel agents, which has been substantial.[104] If the proposals of the applicants advocating unlimited travel agent participation are adopted, they assert that any of the some 5,500 travel agents in this country could charter aircraft for all-expense tours to be conducted as a scheduled service. They theorize that travel agents would thus be transformed into direct competitors of the scheduled carriers, and that those chartering aircraft for all-expense tours would "logically chan-

[103] Joint Intervenors' brief to the Examiner, pp. 23-24.

[104] In 1963 the Joint Intervenors had some $610,630,000 in domestic passenger revenues from travel agent sales with an industry carrier average of 27.5 percent of total passenger revenues derived from this source. For the same year the foreign (excluding the transatlantic), overseas, Hawaiian, and Alaskan travel agent passenger sales of Braniff, Delta, Eastern, Northwest, TWA, and Pan American totaled about $204 million, and the percentage relationship of travel agent passenger sales to total passenger revenue varied from the low of 22.3 percent for Pan American's Alaska division to a high of 61 percent for Braniff.

nel their group tour traffic to such charter flights in order to preserve their investments in organization and promo-

10092

tion."[105] The result, according to the Joint Intervenors, would be that substantially all the pleasure market of the certificated route carriers would be exposed to diversion, a market for the trunklines which at 1963 levels is estimated at about $380 million annually—some $220 million domestically (excluding Hawaii) and $156 million in foreign (excluding transatlantic), overseas, and Hawaiian service. Of this amount some $92 million, which represents 1963 domestic and foreign all-expense tour business sold by travel agents, would be particularly affected.

While the supplementals no doubt could penetrate the existing pleasure market of the certificated route carriers in some degree, the consequences which the Joint Intervenors foresee are vastly overstated. In view of the wide diffusion of pleasure travel, the supplementals obviously could not reach the entire market geographically or by the type of travel. In addition, the most reasonable conclusion from the evidence is that sound promotion of all-expense tours by the supplementals should, as in the case of traditional charters, result in the development of traffic which in significant measure would be newly generated rather than diverted from existing services. In the long run the conversion of additional segments of the traveling public to air travel will broaden the base for air transportation and ultimately will inure to the benefit of the entire air transportation industry.

---

[105] *Transatlantic Charter Investigation*, Order E-20530, March 3, 1964, Appendix A, p. 31.

It is highly improbable that the helter-skelter defection by travel agents from the scheduled carriers to all-expense tour charters, which the Joint Intervenors assume, would materialize. Given adequate restrictions to assure financial responsibility to the public and needed regulatory con-

10093

trols in other areas, participation would more likely be confined to the larger and financially stronger tour operators. Moreover, it is equally unrealistic to suppose that the scheduled carriers would so easily abandon the market. Today the average retail travel agent is generally better situated from a commission standpoint in selling scheduled air transportation services and additional efforts are now being made to increase the incentive.[106] As has been demonstrated in the past, the scheduled carriers by experimentation with tour basing fares, promotional fares, and the like, have at their command ample competitive devices to assure their continued dominance.

In short, a limited and controlled program of liberalized authority for supplemental air carriers offers no significant threat to the certificated route carriers. To the extent that such a program provides the competitive impetus to greater exploitation of the pleasure market, this is a plus rather than a minus for the public interest, since pleasure travel is today the segment of the travel market offering the greatest potential for further development. Any adverse effects on the certificated route carriers from a grant

---

[106] An example is the Air Traffic Conference proposal to raise the commission rate on sales of independent air tours from 10 percent to 15 percent. Order E-22168, May 14, 1965.

of the authority recommended herein are clearly outweighed by the advantages that should accrue to the public.[107]

10094

CONCLUSIONS

Nature and Scope of Authority. The foregoing review of the evidence dispels any lingering doubts that the existing civil and military operations of the supplementals, conducted at no subsidy expense to the Government and without deleterious effects on other carriers, are providing a useful public service responsive to a public need and are thereby making a valuable contribution to the American air transportation system. When the question, however, goes beyond the perimeter of their present authority there is an irreconcilable cleavage in the positions of the parties.

Apart from the specific arguments already considered, the intervenors make the general claim that the record will not support any broadening of the present authority of supplemental carriers, either geographically or by type of operation. They in effect equate public convenience and

---

[107] The Joint Intervenors appear to rely heavily on the *Skycruise Case*, 10 C.A.B. 751 (1949) in which the Board denied the applications of two carriers to provide domestic all-expense escorted tours. In view of the tremendous intervening growth of air transportation generally and the generative effect which all-expense tour charters are likely to have as demonstrated by this record, that decision is clearly not controlling here. In addition, it should be noted that an important ground for that decision was the Board's conclusion that a grant of the applications might have "a serious effect upon these latter [domestic certificated] carriers." (p. 756). In contrast to the operating profit for the trunks and local service carriers for the year ended September 30, 1964, of some $260 million, the same carriers in fiscal year 1948 had a combined operating loss of some $6.5 million and were in the midst of the critical postwar readjustment and reequipment period. CAB, Annual Reports, 1948 and 1949.

necessity with past demands for service, and on this basis assert that there has been no showing of a public need that would justify new certifications; that additional authority for the supplementals would be duplicative of existing services; and that the services of the certificated route carriers are, in fact, wholly adequate to meet demonstrated requirements of the public. Further, they attempt to work both sides of the street by contending that even though there is no public need that would warrant expanding the scope of the supplementals' present operations, if the

10095

Board should do so the new services would be patronized to such an extent as to result in "massive" diversion.[108]

The bulk of the applicants are at the opposite end of the pole, for they seek every conceivable type of operating authority that could be authorized within the issues in this proceeding, granted on a worldwide and uniform basis to each member of the class. The supporting arguments they advance are essentially those of the past—the historically thin operating margins of the supplementals; their particular qualifications as charter operators; the desirability of

---

[108] The intervenors make a number of other general arguments that warrant brief comment. The Joint Intervenors, for example, are highly critical of an asserted lack of facilities on the part of the applicants to provide foreign and overseas service and the generality of their respective plans of operations. Considering the extremely broad sweep of this proceeding, the alleged deficiencies in these respects are not necessarily fatal. See *e.g., Large Irregular Air Carrier Investigation*, 28 C.A.B. 237 (1959); *Zantop-Coastal*, Order E-18318, May 9, 1962; *Transatlantic Charter Investigation*, Order E-20530, March 3, 1964, Appendix A, p. 26. In any event, in view of the delineation of areas for foreign and overseas operations, the limited number of applicants selected, and their qualifications these considerations pose no real problem.

(10095, 10096)

strengthening through equalizing economic opportunity; elimination of seasonal peaks in their operations; and the need for sufficient flexibility to permit economic utilization and upgrading of equipment and to meet shifting needs of the public.

The contentions of the intervenors strike a familiar but discordant note. It has long been established that public convenience and necessity include the desired goals of the future as well as the proven needs of the present and past. The Board's function under the Act is not simply one of providing a kind of after-the-fact regulation by correcting demonstrated service deficiencies and fulfilling existing service demands shown on a factual record; nor is its role

10096

confined to that of an impassive arbiter of conflicting private interests. Rather, the Act affirmatively invests the Board with the duty to consider, as being in accordance with the public convenience and necessity, the "promotion," "development," and "encouragement" of air transportation.[109] This mandate imposes duties which are peremptory, and in compliance with it the Board, with judicial approval, has experimented widely in authorizing new and largely uncharted operations.[110] And while the Board is not to exercise its certification power in aid of purely private interests, improving the economic strength of an individual carrier or carriers is a legitimate and often utilized consideration where such strengthening is an incident to achievement of the public interest.

---

[109] Section 102.

[110] See *e.g.*, *Braniff Airways* v. *C.A.B.*, 147 F. 2d 152 (C.A.D.C. 1945); *American Airlines* v. *C.A.B.*, 192 F. 2d 417 (C.A.D.C. 1951); and *Delta Air Lines* v. *C.A.B.*, 247 F. 2d 327 (C.A. 5, 1957).

In exercising its developmental responsibilities the Board of necessity must rely to a substantial extent on its evaluation of the future; otherwise, no new and previously untried service would ever be provided. The fact that such an evaluation involves liberal amounts of prophesy and judgment does not make it any less firm a basis to support certification, for the provisions of the Act embodying the declaration of policy "are as much an enactment by Congress as is any other section of statute."[111] What is essential is that the record contain a "hard core of factual possibility" which will undergird the exercise of a particular judgment.[112]

10097

As is apparent from the evidence analyzed and considered, the facts comprising the "hard core" are present in abundance here to support the conclusion that the public convenience and necessity require some expansion and liberalization of the role to be played by supplemental air carriers. General economic conditions have provided and should continue to provide a very favorable climate for all facets of air transportation. Yet charter transportation, despite its lower price appeal, has shown nowhere near the growth of the scheduled services where the right to provide it has rested exclusively in the hands of the certificated route carriers. It is doubtful that the civil charter market ever would significantly expand and grow if left entirely to the scheduled carriers, since these carriers naturally gear their operations to the scheduled services

---

[111] *American Airlines* v. *C.A.B.*, *supra*, at p. 420.

[112] *Id.* at p. 421.

which are their primary responsibility and most lucrative source of revenue.

With the competitive stimulus that can be provided by selected charter specialists who are free to concentrate on charter promotion, there is every reason to believe that traditional passenger charter services in overseas and foreign markets will show healthy development, although in many areas not to the same extent or with the same rapidity as has been experienced across the North Atlantic. Corollaries to this development will include, among other things, an enhanced base for air transportation generally as well as price and service advantages for travelers both to and from the United States. The grant of concomitant planeload charter cargo rights may well accomplish some growth for a now meager market and also provide operating flexibility for the carriers in coordinating passenger and cargo movements and minimizing directional imbalance in their operations. Split charter authority for traditional pas-

10098

senger charters is warranted, as across the North Atlantic, by developments in modern airline technology. All-expense tour charters, while admittedly developmental and experimental, hold real promise both domestically and internationally as the instrumentality most likely to accomplish a significant expansion of pleasure air travel, the segment of the air travel market offering the greatest potential for successful exploitation. Since the opening of these additional avenues for beneficial public service will lend economic strength to the supplemental carriers selected by making available needed additional sources of civil revenues and can be accomplished without material adverse

effect on any certificated route carrier, a grant of new and liberalized operating authority to the extent indicated is clearly dictated by the public interest.[113]

Although the prevailing direction of the public interest is clear, the other extreme of worldwide, unrestricted and uniform civil authority for all supplemental carriers is equally to be avoided. After an evolutionary period of some 20 years the supplemental air carriers have achieved a reasonable level of maturity, and the fundamental task now is to ascertain their permanent place in the air transportation system. However, apart from the military and interstate fields in which the need for and usefulness of supplementals are established by past experience, the other

10099

types of authority recommended for them, while fully warranted, are largely experimental and involve the risks and uncertainties of the unknown and the untried. Sound experimentation under these circumstances is not best served by the theory of the roving license, with its attendant dilution of revenue sources and the encouragement which it lends to over-expansion and uneconomic competition

However desirable uniform authority for all may be from the standpoint of some of the applicants, there are marked

---

[113] Pursuant to the request of some of the applicants, an issue was included as to their authority to charter aircraft to airfreight forwarders. Forwarders are now free to utilize the charter services of supplementals both domestically and internationally, and if future authority is confined to planeload movements, no reasons are apparent for disturbing the historic relationship. An additional suggestion that the present military authority be expanded so as to authorize unlimited planeload charters for any agency of the United States Government was unsupported on the record.

(10099, 10100)

differences in their present and potential capabilities and the extent of the contribution they can make to the public interest. The time has come for frank recognition of the fact that all supplemental air carriers cannot be the same in size, earning capacity, profitability, function or opportunity, just as individual air carriers have not been able to achieve complete equality within other segments of the air transportation industry. And "class" type authorizations, issued to all in the hope that they may be utilized, cannot legislate that result. The better regulatory policy is carefully to delineate the specific areas of operations to be served by designated carriers on a basis commensurate with probable public needs, and then to provide the participants maximum security within those limitations. Even then selected carriers having broader authority than others will not have achieved the millennium, for their success will depend primarily on the fruits of their promotional efforts. However, they will have been given the greatest possible opportunity and incentive to maximize their profits, to establish their identity in the markets, and to make the necessary investments in personnel and equipment. This

10100

is the road offering the greatest prospect for orderly and sound realization of the public interest.[114]

---

[114] Some of the applicants appear to argue that Congress in enacting Public Law 87-528 intended that the supplementals continue to be treated as a class for all purposes, including the nature and scope of their authority. However, no such intention is apparent from the face of the legislation or its history. This legislative enactment created no permanent grandfather rights for any carrier but merely afforded operating supplementals the opportunity to continue on an interim basis pending disposition by the Board of their applications for permanent authority under section 401(d)(3). The standard for certification under the latter subsection, as under the other provisions, is the public convenience and necessity.

Areas for Service and Carriers Selected. Since the basic need shown by the record is for promotion and development, and in view of the wide expanse of this proceeding, considerable judgment must be exercised in establishing the precise areas for service. The same is true with respect to the number of carriers deemed required as well as their selection. Further, as has been the case historically when dealing with supplemental air carrier authorizations, the designation of specific terminal and intermediate points is not practicable.

Although the number of participating carriers will differ from area to area, the kind of civil authority they should possess does not vary. This includes the right to perform traditional planeload passenger charters (and related split charters), planeload cargo charters, and all-expense planeload tour charters subject to the terms, conditions, and limitations hereinafter recommended. And while exceptions may be necessary in particular circumstances, logic dictates that for successful exploitation the longer haul foreign and overseas markets demand the highest degree of financial and operational strength. By the same token,

the nearby markets involving less in the way of equipment versatility, personnel and facilities, and financial commitments are generally more appropriate for the smaller, financially weaker, or domestically oriented carriers. Selection is to be made from among the 12 presently operating supplementals which, as later appears, are the applicants deemed qualified to operate the supplemental air transportation services recommended herein.[115]

---

[115] See pages 10130-10134, *infra*.

(10101, 10102)

The awards recommended have as their objective the creation of a mosaic of authorizations commensurate with probable future needs which in the aggregate will provide supplemental air transportation services that truly supplement the existing certificated air transportation system without any undue adverse impact upon it. Due regard has been given to such factors, among others, as the aptitudes of particular applicants and their historic needs and experience, variations in the probability of success in promoting charter service within various areas, the relative financial condition and operational qualifications of individual applicants, and the needs of given applicants for sufficient elbow room to permit growth and development.

A consideration of the particular types of authorization and areas for service follows.

Military. For reasons already considered in detail, it is concluded that all of the 12 successful applicants should

10102

be authorized, as at present, to engage in air transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense.

The Bureau has suggested that such awards be made coextensive with any civil authority granted, apparently on the theory that all carriers would thus be given maximum revenue opportunities in performing their assigned roles. However, the experience of the past and present calls for rejection of this approach and supports the conclusion that military operating rights of the supplementals should be continued on a uniform basis without geographical limitations. While the Bureau's objective is generally a desirable one, the needs to be served by military authoriza-

tions are those of the national defense, not normal commercial needs or those of any individual carrier. Military requirements are at times highly unpredictable and may on occasion call for the services of virtually the entire supplemental industry. Any advantages that might accrue to particular supplemental air carriers from tailoring military authority are outweighed by the desirability of retaining the utmost flexibility for prompt and unconditional commitment to the interests of the national defense.

Interstate and Overseas. By statutory definition interstate air transportation is, of course, between the 50 states and the District of Columbia while overseas air transportation generally refers to operations between the United States and its possessions. It is concluded that all 12 operating supplementals should be authorized to perform supplemental air transportation in the interstate area of the kind found required, while awards in overseas air transportation, to be issued on a more limited basis, should encompass the same operating rights.

10103

The only specific objections to grants of this scope domestically come from the Joint Intervenors, who would deny all supplementals civil charter authority to serve Hawaii and Alaska and thereby restrict them to the 48 contiguous states. Their interest in Hawaii is understandable, since the Islands form an established and increasingly popular resort center, and mainland U. S.-Hawaii operations produce an important part of their pleasure travel revenues. At the same time, however, such operations are of equal if not greater significance to the supplemental air carriers, accounting in 1963 for 12,885 charter pas-

sengers and $1,249,300 of their $4,190,600 in interstate civil passenger revenues.[116] Civil charter revenues from Alaskan operations have not been appreciable for either the supplementals or the certificated route carriers. Nonetheless, projections indicate continued population and employment growth for Alaska; the state possesses all of the natural resources conducive to tourism; and further development is likely if problems relating to tourist facilities and higher cost levels can be overcome. In short, there is no persuasive basis for denying the benefits of supplemental air transportation to Hawaii and Alaska any more than it would be reasonable to effect a similar discrimination with respect to any other two states of the Union.

The markets falling within the statutory definition of overseas air transportation are few in number and confined

generally to the areas of the Caribbean, Central America, and the Pacific.[117] Except for Puerto Rico and the U. S. Virgin Islands, none of them, standing alone, could now reasonably expect to receive any significant volume of charter service.

By far the most practical and realistic approach is not to view these points in isolation but to consider them in relation to the broader geographic areas of which they are a part; otherwise, the potential for beneficial charter service will be unduly and artificially restricted. To illustrate,

---

[116] For the same period 15 reporting certificated route carriers had 10,347 charter passengers and $1,067,000 in civil charter passenger revenues involving Hawaii.

[117] The Canal Zone, Puerto Rico, and the U.S. Virgin Islands; American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, and Wake Island.

the type of all-expense tour charter authority recommended herein contemplates all-expense tours involving a minimum of two tour destinations at least 50 miles apart. A carrier having only overseas authority could not perform a service combining San Juan with Nassau or Montego Bay, for example, because operations to the latter two points involve foreign air transportation. This would be so even though there is a reasonably close geographical relationship between the points and such a tour might have particular appeal from the standpoint of the potential passenger. The ability to serve all such points within the same broadly defined area would enhance both the public usefulness of the service and its benefits to the operating carrier. For these reasons points technically within the confines of

10105

overseas air transportation are considered as part of related and broader geographic areas, subsequently discussed.[118]

---

[118] Trans Caribbean acknowledges that there may be a limited role for Southern Air Transport in the Caribbean but otherwise opposes any supplemental air carrier authorization in Caribbean overseas and foreign markets, particularly that which might involve the San Juan-Aruba segment served by the carrier. In doing so, TCA points primarily to the substantial U.S. flag competition now existing in U. S.-San Juan markets, the abundance of scheduled service, the prevailing low level of fares (including promotional and experimental fares) and the dearth of past supplemental carrier charters. Here, however, as in other areas, the needs are basically promotional and developmental rather than remedial. Without the substantial attraction of San Juan, the possibilities for the most effective development of pleasure travel to and from the Caribbean would be greatly diminished. Further, there is no room for a serious contention that some expansion in civil charter activities would materially affect existing scheduled carriers. On the basis of September 1963-March 1964 figures, the New York-San Juan market had reached 650,000 annual passengers and was

(10105, 10106)

Transpacific.[119] Of the long haul overseas and foreign markets at issue in this proceeding the transpacific area offers the greatest potential for future development. Because of the distances involved, the expense level for pleasure travel must necessarily remain relatively high. Nonetheless, the substantial price reductions possible with charter transportation will be significant in expanding the markets and bringing the benefits of low cost air transportation to travelers both to and from the United States.

10106

The increasing importance of travel movements between the U. S. and Asiatic and Oceanic countries is demonstrated in various ways on the record, many of which have already been recounted. Total travel to and from these areas has quadrupled since 1951; the number of temporary visitors to the U. S. has shown a steady increase, as has the number of passports disclosing first area destinations in the Pacific countries; and the number of air passengers arriving and departing the U. S. for Pacific countries has more than doubled between 1959 and the year ended April 30, 1964—

---

served by three U. S. scheduled carriers without competition from foreign operators. In size this market is some 15 to 20 times larger than the New York-London, Paris, or Rome markets which are served successfully by the two U. S. flag carriers and numerous foreign air carriers, and with competition from the latter and the supplemental air carriers for charter traffic.

[119] The transpacific area is deemed to include the U.S. overseas points in the Pacific previously mentioned (f.n. 117, *supra*) and civil passenger and cargo flights in air transportation between any point in any State of the United States or the District of Columbia, on the one hand, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east, on the other hand, via a transpacific routing. See *e.g.*, World's interim certificate appended to Order E-21304, September 21, 1964, part III, p. 2.

from some 323,000 to over 683,000. Japan in particular (and to a lesser extent such additional destinations as Hong Kong, the Philippines, and Korea) has emerged as a major travel attraction. There were, for example, some 118,000 passengers (U. S. citizens and aliens) traveling by air between the U. S. and Japan in the fiscal year 1958 compared to over 346,000 such passengers in 1963. Further, there are indications of growing interest in pleasure travel to the U. S. from Pacific countries, an expansion of tourist facilities throughout the Pacific, and an increasing tendency on the part of "second time" travelers, who may have visited other areas such as Europe, to choose Pacific destinations. Despite these and other indicia of continuous market expansion, the civil passenger charters of the two U. S. flag carriers have been minimal.[120]

10107

Perhaps the most important single deterrent to traffic development in the Pacific is the relatively high fare level which has subsisted despite the urgings of the Board for reductions. Promotional and experimental fares are unknown, although they are common to other areas such as the transatlantic where they have played an important and demonstrable part in expanding traffic and increasing load factors. While the mileages are comparable, air fares between the west coast points of San Francisco and Seattle

[120] In 1963 Northwest carried 98 passengers for $6,239 in transpacific civil passenger charter revenues while Pan American realized $197,130 from the carriage of 683 passengers. The highest annual revenue total from this source for either carrier during the 1961-1963 period was the $283,895 earned by Pan American in 1961. The trend for the two carriers has been downward—$442,572 in total transpacific civil passenger charter revenues in 1961 to $203,369 in 1963.

and Tokyo, for example, are one-third to one-half higher than those between the same west coast points and London. This situation may to some extent be the result of intransigence within IATA, but it certainly is not dictated by any needs of the U. S. flag carriers which are enjoying high yields and ever decreasing break-even load factors. The Pacific operations of both Northwest and Pan American consistently have produced substantial rates of return on stockholders' equity as well as, in recent years, rates of return on investment at least double those of their respective systems.[121]

While the future for charter service in the Pacific is promising, in all probability the development will be slower than that experienced across the Atlantic. Until the problems are overcome, the acquisition of landing rights may pose difficulties and in some areas tourist facilities must

10108

be expanded and improved. Further, despite continual growth the total existing air passenger market between the U. S., on the one hand, and Asia and Oceania, on the other, is only about 23.5 percent of U. S.-Europe traffic, measured by the yardstick of air passengers arriving and departing the U. S. for such countries. To meet the needs of U. S.-Europe markets the Board originally recom-

[121] In 1963 Pan American's rate of return on stockholders' equity was 43.89 percent for its Pacific division contrasted to 21.39 percent for its entire system, while the comparable figures for Northwest were 30.05 percent (international and territorial) and 11.56 percent (domestic). The rate of return on investment for Pan American's entire system was 12.17 percent compared to 21.49 percent for its Pacific division. Northwest had a rate of return on total investment of 8.78 percent domestically and 17.77 percent in international and territorial operations.

mended three supplemental carriers, two of which have effective certificates; several others have been granted temporary seasonal authority; and the Board is now in the process of considering the possible certification of additional charter operators.

All factors considered, it is concluded that the certification of three supplemental air carriers would amply meet the foreseeable developmental needs in the transpacific area. Upon a comparative evaluation of the 12 eligible applicants, the balance clearly calls for the selection of World, TIA, and Southern. These are the three predominantly Pacific oriented carriers; each has had extensive experience in long over-ocean flights in the precise area, primarily in military operations; and each has personnel and facilities in the Pacific. Both World and TIA operate modern turbo fan jet aircraft, a distinct advantage in economy and passenger appeal for operations in the vast expanse of the Pacific. Southern, although presently without jets, should have the capability of acquiring them if needed in view of its consistently sound financial condition. All three carriers possess the inherent financial and operating strength for successful operations. While other applicants

10109

no doubt could operate the services, any advantages flowing from their certification are outweighed by the foregoing factors of preference.[122]

---

[122] Conceivably other carriers such as AAXICO, Capitol, Saturn, or Zantop might fall into this category. However, apart from their lack of comparable experience in the Pacific, for reasons subsequently set forth a balancing of all interests indicates that they are better suited for awards elsewhere.

(10109, 10110)

Canada and Mexico. Although there is little specific data of record, Mexico, with its sunny climate and colorful history, and Canada, with its natural beauty, are obvious tourist attractions for the American public. The proximity of these two countries, both contiguous to the continental United States, and the correspondingly lower cost factor provide additional incentives for transborder travel. Historically, there has been relative ease of entry for air movements to and from Canada, while charter flights involving Mexico have been less frequent and subject to considerably more foreign government restrictions. In the past at least six supplementals have had occasion to conduct passenger charter flights to Canada pursuant to individual exemption authority from the Board. The civil passenger charter revenues for the combination carriers from charter operations in the entire North America area have not been large in relation to their total revenues.[123]

10110

Upon a balancing of all pertinent considerations, it is concluded that two of the applicants should be granted

[123] Looking at the 12 presently operating supplementals, in the 1961-1963 period there were some Canadian charter operations by American Flyers, Johnson, Modern, Purdue, Saturn, and Vance. As appears from the source indicated in footnote 37, *supra*, between June 30, 1964, and June 1, 1965, the Board issued some 25 exemptions for Canadian passenger charters to American Flyers (10), Capitol (1), Johnson (2), Purdue (4), Saturn (2), TIA (4), and Vance (2), and six for Mexican operations (American Flyers, 2; Johnson, 2; Saturn, 1; and World, 1). As reported to the Bureau, total foreign passenger charter revenues for all supplementals in the North American classification used by the Bureau (Canada, Mexico, Bermuda, and the Bahamas) totaled $92,147 in 1961, $53,887 in 1962, and $125,617 in 1963. The comparable figures for all of the combination carriers were $638,334 in 1961, $409,979 in 1962, and $1,018,848 in 1963.

Canadian authority only and an additional four should be authorized to provide supplemental air transportation services between the United States, on the one hand, and Canada and Mexico, on the other. Except for one applicant of the six, these are the smaller of the supplementals who are not as well situated from the standpoint of demonstrated operational and financial capability. The shorter stage lengths and the less demanding equipment and personnel requirements make these markets particularly appropriate for operation by these carriers. This liberalization of their present operating authority will afford the carriers selected opportunities for growth and expansion that should not place an undue strain upon their resources and would give them access to these markets unencumbered by competition from the larger and more powerful supplementals.

Operating rights to Canada are a natural for Johnson and Purdue. Both are relatively small in size and scope of operations, they are financially stable on a modest scale, and each has some past interest in providing Canadian service. Johnson is renowned for its unique skills in mountain flying throughout the Pacific Northwest, particularly its firefighting activities under contract with the U. S. Forest Service which account for a substantial part of its operations. Johnson's other charter activities, which occasionally have involved transiting the U. S.-Canada border, are entirely nonmilitary and have been confined mainly to domestic passenger movements, especially for athletic teams of universities with which it has had long term associations. Purdue is a small carrier operated on a nonprofit basis as

an adjunct of the educational activities of the university and has the greatest historic interest in Canadian passenger operations for hunting and fishing parties, etc., of all the supplementals. Whatever may be the technical scope of their applications, the record makes clear that the main thrust of the requests of both Johnson and Purdue is their desire to obtain Canadian operating rights and to retain interstate authority on a basis of equality with other supplementals.

The remaining applicants selected are American Flyers, Modern, Vance, and Zantop. American Flyers has been the most versatile of the four in the operation of conventional charter service. Originating as a fixed base operator, its early operations were confined to passenger charter services with little participation in the provision of individually ticketed services. Reliance on military revenues increased consistently throughout the 1961-1963 period, and starting in 1963 the carrier undertook a program designed to expand its civil charter revenues with use of Lockheed Electra and other aircraft. Except for Purdue its historic experience with Canadian operations, while not extensive, is superior to other applicants, and more recently its charter flights have extended into the Caribbean.

American Flyers' financial condition is deemed sufficient to permit expanded certification, although there have been some weaknesses, particularly in a persistent negative working capital position. Further, the applicant's continued financial well-being has been largely dependent upon one man—Reed Pigman, its owner and president, who also provides the business leadership for the company. These circumstances counsel caution in order to guard against situ-

ations conducive to an overextension of the carrier's efforts. The award of Canada-Mexico authority, together with a new authorization in the Caribbean subsequently recommended, provide ample opportunities for the carrier to increase its sources of civil revenue while performing a useful public service.

By virtually all yardsticks Modern and Vance are two of the smaller, predominantly domestic supplementals and of questionable resources and financial resiliency for extensive operations. Both are significantly smaller than American Flyers in size and scope of operations, but like the latter carrier each is dependent largely on one individual for financial strength—John P. Becker, in the case of Modern, and Vance Roberts, Vance's president.

Of Modern's total of $1.1 million in transport revenues for the year ended September 30, 1964, 90.1 percent was attributable to military operations. Even with this high degree of dependence on military revenue sources Modern in the last two years has shown negative net worth and net losses; it has had a negative working capital position for at least the past four years.[124] Until a modest expansion program was undertaken in 1964 the volume of Vance's operations as a supplemental air carrier were insignificant from an industry viewpoint and, for the past four years, the carrier's financial operating results have hovered at or near the break-even point. Vance does, however, have the advantage of maintaining its home base in Seattle, Washington, with a long history of performing charter services, including some Canadian flights, with both small and transport type aircraft.

---

[124] Appendix C.

If Modern and Vance are to survive, each needs some broader horizon for economic development. While it may be, as both applicants appear to claim, that their past performance has been affected in some degree by special circumstances and by conservatism in management policies pending a determination of their place in the industry, their history and marginal financial condition do not justify any broader expansion of authority than that recommended.

Zantop presents a special case. Except for a negative net working capital position that does not appear to have impeded its operations, Zantop is one of the largest and strongest of the operating supplementals. Its strength is particularly evident from its net worth, the volume of its operating revenues, and the established profitability of its operations. The carrier is, however, a relative newcomer to the supplemental industry, having received its supplemental certificate in 1962 by transfer for the purpose, among others, of acquiring air carrier status necessary to continued operations for the military. Now, as previously, Zantop is almost exclusively a military and civil cargo specialist. Of its entire fleet of some 59 aircraft owned or leased, only four—three DC-3's and one DC-4—are in passenger configuration. No civil passenger charter flights were undertaken until the latter half of 1963, and only $14,000 of its calendar year 1963 total transport revenues of $12.9 million came from this source.

The sum of the circumstances surrounding this carrier show that it has a lesser degree of need in the normal sense for new markets than do the other operating supplementals. Entry into the civil passenger charter field on a broad scale would change its basic nature. Zantop's operations are now

substantial and clearly profitable, with a healthy ratio of civil and military revenues to total transport revenues of 46.3 percent and 53.7 percent, respectively. In short, Zantop does not fit the mold of the usual supplemental; as a specialist, it has and will continue to derive its greatest sustenance from the contract cargo operations for Ford, General Motors, and Chrysler and its military cargo activities, all of which can be operated with the interstate and military authority recommended. The additional opportunities for growth by participation in the Canadian and Mexican charter markets should be fully adequate for Zantop's future development.[125]

The Caribbean.[126] Even acknowledging the effect of the unpredictable and volatile political eruptions in the Caribbean, as exemplified by the situations in Cuba and the Dominican Republic, the Caribbean area offers the most favorable immediate prospects for pleasure travel develop-

---

[125] The remaining six applicants have, of course, the capabilities for Mexican and Canadian operations, either in addition to or in lieu of the carriers selected. However, apart from differences reflected in their background and experience, the services recommended should be ample for promotional purposes and any participation by the larger carriers could only be at the expense of the smaller carriers in areas logically suited for their development.

[126] Precise definitions of the Caribbean area have not been advanced and there is considerable variance in geographic coverage reflected in the presentations of several parties. As used herein, the Caribbean area includes the following: supplemental air transportation between any state of the United States or the District of Columbia, on the one hand, and a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

ment of any of the overseas and foreign markets in which the supplementals could be permitted participation as the

10115

result of this proceeding. The lure of sun and sea is compelling for the tourist, and the attraction of lower cost for charter services is bound to develop new traffic to and from the area, which is already one where there has been some concentration on charter services by Pan American. From the standpoint of distance, geography, and facilities, it is the area which provides the closest analogy to the inclusive tour charter services to "sun spot" resorts that have proven to be so popular with the British public.[127]

Passenger charters of the supplementals to and from the Caribbean have been very few in number, no doubt hampered in part by the absence of certificate authority which would warrant extensive promotional efforts. There were some passenger operations by American Flyers and Saturn in 1963; these carriers subsequently continue to participate on a limited scale, as have Capitol and some other supplementals.[128] In 1964 World operated an extensive and

---

[127] The resort characteristics of the Caribbean account for a substantially higher percentage of known pleasure travelers than in other areas. A survey conducted during parts of 1963 and 1964 by the Port of New York Authority of U. S. residents traveling overseas out of New York showed the percentage of the total passengers surveyed whose purpose was touring or visiting resorts to be 84 percent for Bermuda and 68 percent for the Caribbean in contrast to 30 percent and 13 percent, respectively, for Europe and South America. The Joint Intervenors had some 478 civil passenger charter flights to the Caribbean, Central America, and Bermuda in 1963, more than double the number they operated across the Atlantic. However, 439 of these flights were operated by one carrier, Pan American.

[128] In 1963 American Flyers had two passenger charters and Saturn 12 in the geographic area covered by the Caribbean, Central

highly successful all jet passenger charter program for Chevrolet which involved carrying 5,610 passengers from

10116

37 departure cities to New York for two days, Nassau for two days, and return. And, as has been seen, Southern has some identity in parts of the Caribbean by virtue of its more extensive cargo flights to Puerto Rico, the Virgin Islands, and the Dominican Republic.

Of the 12 qualified applicants, six are particularly well suited for certification to provide supplemental air transportation in the Caribbean—American Flyers, Capitol, Saturn-AAXICO,[129] Southern, TIA, and World. Each has sufficient resources and facilities to participate effectively in traffic development in these more competitive markets. Such authorizations in the hands of these carriers should provide adequately for the needs of the public and at the same time afford additional and desired strength for their own operations. Any authorizations beyond those recommended would in all likelihood unduly dilute the traffic and

---

America, and Bermuda. Between June 30, 1964, and June 1, 1965, the Board issued some 32 exemptions for supplemental passenger charters to the Bahamas, 10 each to American Flyers, Capitol, and Saturn and two to Modern. There were 13 involving Jamaica (American Flyers, 7; Saturn, 5; Capitol, 1) and five for Bermuda (Capitol, 1; Saturn, 2; World, 2). CAB, Weekly Summary of Orders and Regulations.

[129] This selection is made on the assumption that the pending Saturn-AAXICO merger agreement in Docket 15675 will be approved. So far as appears from this record, a merger of the two carriers would provide a cure for AAXICO's deficiencies in civil markets while, at the same time, overcoming Saturn's past financial problems typified by marginal net worth, operating losses, and a continuous negative working capital position. In the event that approval is not granted, a reappraisal of the awards recommended here should be made.

impair the economic feasibility of the services without producing offsetting public benefits.

All of the foregoing carriers except TIA have had some past experience with operations in the area, albeit for the most part on a minor and spasmodic basis. The Caribbean operations are generally short to medium haul by comparison to the transoceanic markets and they lend themselves to operations with both piston and jet equipment. These particular applicants have considerable equipment versa-

tility, ranging from piston aircraft to American Flyers' Lockheed Electras and the pure jets of Capitol, TIA, and World. Southern conceivably might experience some passenger equipment shortage at its existing fleet level but the carrier possesses ample means to supplement it. With Caribbean and Canada-Mexico authority American Flyers should be assured of adequate operating flexibility and growth opportunities. Authorizations in the Caribbean—the overseas and foreign area most likely to produce immediate traffic response—are of particular importance to Capitol and Saturn as backup support for their certificated transatlantic operations and to Southern, TIA, and World as a means of buttressing their capacities to utilize the other overseas and foreign authority recommended for them in this proceeding.

From the financial standpoint, the positions of all the carriers selected are deemed adequate. The situations of American Flyers, Saturn-AAXICO, Southern, and World already have been noted. Capitol and TIA are among the largest operators in the industry, currently ranking second and fourth, respectively, in total operating revenues. While

each has positive net worth and has been experiencing operating profits, for the past three years both have had substantial negative working capital positions. Their forte, however, lies in their demonstrated ability to carry on extensive, successful, and continuous operations despite shortages in working capital and their possession of jet equipment with its superior appeal to at least a significant portion of the traveling public.

10118

Central and South America.[130] On the basis of known experience, the possibilities for charter traffic development to and from Central and South America are the least promising of all the overseas and foreign areas with which this case is concerned. Such references to the potential of the area as do exist in the testimony of travel agent witnesses are not encouraging. Historically, civil passenger charters involving South America have been virtually nil. None was operated by any supplemental air carrier in the 1961-1963 period; and, of the Joint Intervenors, only Pan American operated them—21 in 1963 and only 64 in the entire 1961-1963 period.[131]

The reasons for such paltry charter development cannot be ascertained with certainty from the record but at least

---

[130] Included in this category are the countries on the continent of South America; the Canal Zone; British Honduras; and the Central American Republics of Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama.

[131] The history of civil cargo charters to and from South America tells the same story. The applicants operated no such charters in 1961, four in 1962, and 12 (all by Southern) in 1963. Pan American, alone among the Joint Intervenors, operated 12 in 1961, three in 1962, and none in 1963. More recently the Board authorized World to operate 13 mixed passenger charter flights between the United States and Brazil. Order E-22464, July 22, 1965.

(10118, 10119)

some of the contributing causes are known. Leaving aside the role which may have been played by lack of interest and promotion, it is true that the historic traffic and rate of growth have not been as great as in other areas less remote from the principal world markets. Also, there is extensive competition from foreign air carriers in the area, much of which is provided by non-IATA carriers which exert continual pressure on rates. The result has been that fare levels are lower than in some other areas of comparable distances. Further, many Latin American governments have tended to be highly protective of the interests of their

10119

own carriers and therefore to resist encroachment by carriers of other nationalities beyond the level of competing service they are obliged to permit by reason of reciprocity or bilateral agreements.

Apart from problems such as these which may be overcome or minimized in time, it is not unreasonable to expect that concentrated promotional efforts would meet with at least a modest response from newly developed traffic. South America accounts for about one-seventh of the world's land area and has virtually every type and variety of natural attraction. Much of its climate complements that of the United States. This is an advantage which, if exploitable, would aid in smoothing out seasonality problems for the carriers and increasing the attractiveness of pleasure travel. The countries of Central America are, of course, favored by the appeal of a climate which should be conducive to tourism.

Population, visitors to the United States, and air travel generally are all on the rise. The population of the Latin

American Republics is expected to increase to 283 million by 1970 from a level of 155.6 million in 1950. South American visitors to the United States rose from 71,965 in 1959 to 118,662 in 1963; or 65 percent, while over the broader span between fiscal 1951 and 1963 total travel by air to and from South American countries increased 232 percent—from 118,631 to 393,551. Since the Latin American countries belong to the group of nations that have developing economies, as contrasted to those already developed, it is likely that growth will accelerate. The estimated growth rate of the gross domestic product of the Latin American Republics exceeds that for many developed countries, including the United States, and surpasses the average growth rate projected for the total free world.

10120

Despite the less optimistic outlook for charter services to and from Central and South America than elsewhere, some limited experimentation designed to promote and develop these markets is warranted. The circumstances, however, indicate that the Board should tread slowly and restrict participation to highly qualified applicants. Two carriers should be ample to meet the developmental needs, and such limited participation clearly would not produce any adverse effects upon the present United States flag carrier operations in the area. An important consideration in selection must be that the applicants now have the strength and resources necessary to provide the extensive promotional efforts that will be required. In addition, in view of the vast distances involved and the relative thinness of the present traffic flows, the possession of jet aircraft would appear to be a practical necessity for the provision of an appealing and saleable service.

(10120, 10121)

The choice naturally reduces itself to one between World, TIA, and Capitol. All three have extensive experience in long range operations; all now operate pure jets and would be in a position to institute service more promptly than any of the other applicants. World is entitled to preference because of its superior financial position and inherent strength, coupled with its requirement for diversification. As between Capitol and TIA, the balance favors TIA. Capitol is now heavily committed to its certificated civil passenger charter operations across the North Atlantic, which will continue to be a primary area of concentration for the carrier. TIA's better operating profit picture should permit it more readily to invest in promotion and development. Also, with 16.1 percent of its transport revenues derived from civilian sources as contrasted to 31.8 percent for Capitol, TIA has a relatively greater need for broadening the base of its civil services.[182]

10121

Transatlantic Cargo. Factors of the past and the likely future bearing on cargo charters already have been considered in detail. In general, it was concluded that planeload civil cargo charter rights are a natural and desirable concomitant type of authority for the supplementals in any overseas and foreign area in which they are authorized to conduct passenger charter operations.

There obviously is no underlying need, past or future, for extensive civil cargo charter operations by the supplementals across the North Atlantic. However, awards of planeload cargo charter rights to the certificated transatlantic passenger charter operators, Capitol and Saturn,

[182] Appendix C.

fully accord with the requirements of the public convenience and necessity since (1) they will aid in the development of new traffic in a now meager market, and any success in this field will redound to the benefit of the shipping public; (2) such authority will afford these two carriers some degree of operating flexibility in their efforts to avoid excessive ferry mileage in performing their passenger charter service; and (3) planeload cargo charters operated by these two carriers would be basically nondiversionary and would not result in any significant adverse impact upon any United States flag carrier.

Fitness of the Applicants

Although the criteria for measuring fitness, willingness, and ability cannot be determined with mathematical precision, the general tests to be applied are now well established. One important ingredient is the compliance disposition of a particular applicant. Insofar as the 12 operat-

ing supplementals are concerned, this is not a factor of decisional significance for none has engaged in activities that might be deemed disqualifying for the purposes of this proceeding.

Particularly important among the host of other considerations to be evaluated are experience, personnel and equipment, operating plans and facilities, and the financial posture of the applicants. Carriers which have been able to operate continuously and successfully, and therefore to establish going-concern status, have an obvious advantage in showing their ability to comply with the ultimate statu-

(10122, 10123)

tory standard. Conversely, for new applicants or those which have had prolonged lapses in operations, the task of establishing their fitness naturally is a more demanding one.[133]

The enactment of Public Law 87-528 left no doubt of the overriding concern of the Congress that the financial condition of any supplemental air carrier be sufficiently strong to assure adequate and continuing protection of the public. This basic intent has been recognized by the Board in the following language:[134]

10123

"Looking at the pattern of the supplemental legislation and its legislative history, we are convinced that Congress viewed the financial fitness of supplemental carriers as having a direct bearing on safety of operations and fair treatment of the public; that it contemplated that such carriers should have and maintain a minimum financial strength and stability sufficient to protect the public from risk and abuse; and that it intended for the Board to eliminate from the supplemental field carriers who did not meet such minimum

---

[133] In assessing the case presented by a new applicant in the *Large Irregular Air Carrier Investigation,* the Board said

"* * * operational ability for such an applicant is not established merely by pointing to sources of potential traffic, equipment, talent, and funds not integrated into a plan for doing business, at least in the absence of a showing of considerable managerial and financial strength, well in excess of applicant's. Operational ability can be established on the basis of limited resources by showing that such resources are available and will be sufficient not only to inaugurate the proposed supplemental operations but also to continue such operations for an initial period of time, such as 1 year." 28 C. A. B. 224, 270 (1959).

[134] Order E-21562, December 7, 1964, pages 5-6.

standards before financial weakness could translate itself into injury to the public rather than withholding action until after the financial unfitness had evolved into damage or injury to the public."

Again, in underlining its own responsibilities to honor this purpose, the Board said:[135]

"It is not within the province of the Board to speculate on whether the Congress might have subjected supplemental carriers to less stringent requirements or on the wisdom of the particular requirements that it did impose. The critical fact is that Congress, after careful and thorough evaluation of conditions in supplemental air transportation, concluded that only those carriers that established a minimum financial strength and stability sufficient to protect the public from risk or abuse should initially be permitted to operate, and only those carriers that maintained such strength and stability should be allowed to continue operations. Our task is limited to carrying out that Congressional intent."

Upon consideration of all the evidence in the light of these requirements, for reasons that follow it is concluded that the applicants Conner, Holiday, ONA, Standard, Stewart, and USOA are not fit, willing, and able to be certificated as supplemental air carriers. None possesses sufficient operational and financial capabilities to meet the statutory standard.[136]

---

[135] *Id.* at p. 6.

[136] Detailed summaries of the pertinent facts concerning these and other applicants are contained in Appendix A.

10124

The Unqualified Applicants.

Conner. The applicant's predecessor in interest operated intermittently as a large irregular carrier between 1949 and 1959 under the direction of Mr. F. A. Conner. No flights in air transportation were performed after receipt of a supplemental air carrier certificate in the latter year, and on this ground the Board found that the carrier did not qualify for interim operating authority.[137]

There has been no significant change in the situation. The applicant, a newly formed Delaware corporation, is a corporate shell that apparently was organized to permit Mr. Conner to preserve a tax loss of the predecessor company, a Florida corporation, which had an accumulated deficit of $369,332 as at June 30, 1964. The applicant does not have a firm organizational or financial basis for operations and is without any convincing prospects of achieving one. The corporation is dormant; its only assets are $1,000 contributed by Mr. Conner; and it has no aircraft, owned or leased, and no full-time employees. While Mr. Conner has offered to guarantee personally up to $500,000 for initial operations, the facts relied upon to establish his ability to do so are not impressive. The bulk of his assets consists of used aircraft and related parts and equipment, not independently valuated, and much of which is not in operating condition or particularly suited to airline operations.

Holiday. This applicant is entirely a paper company. Its principals, Messrs. Neumann and North, as well as other proposed officers and employees, have some aviation back-

[137] Order E-19045, November 28, 1962.

ground, but the sum of their experience does not establish demonstrated capacity for the conduct of sustained and successful air carrier operations. The applicant did not present a balance sheet or other formal indicia of its present financial condition; it has no aircraft, owned or leased, no salaried employees, and no other equipment or facilities apart from some leased space at Midway Airport in Chicago.

Holiday asserts that for the first year of operations it would devote itself exclusively to conducting a "contract" cargo business of a kind which, according to the applicant, would not constitute common carriage and therefore would not require economic regulatory authority from the Board. Certification as a supplemental air carrier is desired in order to buttress the contemplated freight business and to allow for eventual expansion into passenger charter transportation.

The applicant's future operating and financial plans are elaborate but unconvincing. They are keyed initially to the execution of assertedly favorable contracts with large property shippers, including Sears and Roebuck, and later, to the issuance of a certificate as the result of this proceeding. However, despite the fact that the execution of such contracts was alleged to be imminent and the record was held open to receive copies of them, none was tendered. In the absence of such contracts, the house of cards collapses. Measured by its own presentation applicant's financial prospects then would lie only in some minor loans and the possibility of relatively small commitments, primarily from the organizers and their families.

In sum, the showing made by this applicant falls far short of the requisite degree of fitness contemplated by the statute.

ONA. ONA was once a dominant carrier among the supplementals but is now in bankruptcy, having conducted its last revenue flight in October 1963. It has no aircraft, owned or leased, and only two nonexecutive, full-time, salaried employees. The carrier was found financially unfit for transatlantic passenger charter certification by Examiner Wiser, and the final resolution of that and other issues is pending in the *Reopened Transatlantic Charter Investigation,* Docket 11908 *et al.*

ONA presented its case on two alternative assumptions: first, that it will not receive a transatlantic charter certificate; and second, that such a certificate ultimately will be issued to it. Even upon the basis of the carrier's projections, under the first assumption it would need not only a final discharge from bankruptcy, which has not been obtained, but also some $300,000 to $350,000 for the initial period of its operations. However, no source for financing of this magnitude was shown. Under the second assumption, ONA has written commitments for funds totaling $750,000 from Messrs. Hinckley and Marx, who would then become co-owners of the company.

Looking at the existing situation realistically, there is no alternative to a finding that ONA is financially unfit for certification as a supplemental air carrier. The carrier lacks adequate financial resources—and now the operating organization—and has not established that it has the capability of acquiring them under present circumstances. The action

the Board may ultimately take in the *Charter Investigation*, the consequences that may flow from it, and the avenues

10127

that may then be open to the carrier to pursue broader operating rights are, of course, wholly in the realm of speculation. Whatever the outcome there, this record admits of no conclusion but that ONA is now unfit.

Standard. This applicant, recently discharged from bankruptcy following the Board's action suspending its interim operating certificate for financial unfitness, has some $8,000 in office furniture and equipment to be turned over to it by Shields B. Craft, its president, general manager, and controlling stockholder. It has no other assets, no aircraft, owned or leased, no ground equipment and no paid employees.

The applicant's future financing is dependent on a Mr. S. H. Smith who did not appear and offer testimony in the proceeding. Mr. Craft testified to the existence of an oral understanding with Mr. Smith to furnish $100,000 in capital for the company. The net result of the arrangements with Mr. Smith, should they become legally binding, would be that control of the company would pass from Mr. Craft, an individual with vast experience in supplemental air carrier operations, to Mr. Smith, who has had a long association with surface transportation but who has no aviation experience. Further, the applicant's plans for instituting service are of a frugal and shoestring variety. They are dependent on an exceptionally favorable lease for aircraft and related services said to be available from Las Vegas-Hacienda Hotel Corporation, with whom Mr. Craft previ-

ously has been associated; upon token payments to supervisory employees for performance of their administrative and managerial duties; and upon an agreement of the officers to forego any salaries or other compensation until such time as the applicant returned a profit.

10128

While conceivably Standard might be able to reactivate some operations if all of its plans materialized, its presentation does not reflect the degree of qualification that should be required of a supplemental air carrier. Nor does it inspire confidence that the applicant would have the sustaining strength to meet the continuing requirement of fitness imposed by the statute.

Stewart. This applicant, composed of Mr. Edgar A. Stewart doing business as Stewart Air Service, participated in supplemental air carrier operations from about 1948 until early in 1962 when its air carrier operating certificate was the subject of an emergency suspension by the Administrator of the FAA. Thereafter revocation of the certificate was sustained by Examiner Caldwell, and the applicant did not prosecute a timely appeal to the Board. The applicant has not conducted any operations with transport type aircraft since the revocation and it does not hold interim operating authority.

At the time of the revocation Stewart's current liabilities were about double its current assets, and the carrier had a fleet consisting of four DC-3's and one DC-4, which were owned, and an additional DC-4 under lease. It has retained ownership of three DC-3's and one DC-4, as well as related equipment, and of this fleet the DC-4 and one DC-3 are in inactive status. Mr. Stewart asserts that only $25,000, which

could be obtained on a personal loan basis, would be needed immediately to reactivate operations and that an additional $100,000 could be raised if needed by mortgaging the aircraft. The availability of the bank loan is not reflected in any written commitment of record, and the valuation of the aircraft was not established by independent appraisal.

10129

Considering all the circumstances, the efficacy of applicant's plans for future operations is open to substantial question. While, as in the case of Standard, the applicant might be able to inaugurate some services, there has been no demonstration of abiding and sustained strength for assuring continual financial fitness. At best the financial capabilities reflected by the applicant's evidence are dubious, and they are insufficient to warrant certification.

Wholly apart, however, from this consideration it is concluded that the past conduct of the applicant shown by the revocation action is disqualifying, since the applicant cannot be found to possess the necessary compliance disposition. The violations at issue there stemmed from a failure to abide by safety regulations and therefore go to the heart of the Congressional concern in enacting P. L. 87-528. They were of such seriousness as to lead the Administrator to conclude that Stewart had "demonstrated such a lack of that degree of judgment, integrity, care and responsibility" that he could no longer find the carrier "properly and adequately equipped and able to conduct a safe air transportation operation."[138] While the applicant has sought to attack that determination collaterally by alleging

[138] Appendix A, p. 25, f.n. 45.

unfairness, discrimination, unwarranted persecution, etc., the ultimate decision was reached after full participation by the applicant and stands unimpeached. Nothing has been presented that would justify the conclusion that, after over three years of dormancy, the applicant is now qualified from a compliance standpoint.

10130

USOA. Originally a substantial supplemental air carrier, USOA's financial condition has so deteriorated in recent years that the Board was obliged to suspend and ultimately revoke its interim operating authority for lack of financial qualification. In taking the revocation action the Board found that the applicant was "totally and irredeemably financially unfit." [139]

This record provides no basis for optimism but simply reenforces the Board's earlier determination. Most of the evidence offered here by the applicant was before the Board in the form of exhibits in Docket 13908 at the time the revocation order was entered. Subsequently the applicant has found it necessary further to deplete its flight equipment by aircraft sales in order to keep its head above water. Even so, however, USOA's most current balance sheet as at December 15, 1964, shows current assets of approximately $318,000 and current liabilities of about $950,000. The applicant obviously would require substantial additional financing and no possible source for it was shown.

The Remaining Applicants. The fitness of the remaining applicants is not seriously challenged, except for a general argument advanced by the Joint Intervenors and reserva-

[139] Order E-21562, December 7, 1964, p. 12.

tions expressed by the Bureau as to three applicants. The Joint Intervenors assert that none of the applicants is fit to provide service in overseas and foreign areas, primarily on the grounds of insufficient facilities, inadequate operational projections, the lack of evidence concerning

10131

the availability of landing rights, etc. These arguments are all of the type previously considered and rejected.

The Bureau's reservations concern Modern, Vance, and Zantop. In view of the marginal financial condition of the first two, the Bureau would limit their certification to a three-year period. Zantop holds not only an interim certificate as a supplemental air carrier but also an exemption from the certification requirements of section 401 of the Act and the tariff provisions of section 403 to the extent necessary to permit it to conduct its cargo services under long term contracts with Ford, General Motors, and Chrysler. The exemption was originally deemed necessary because the automotive operations do not fit squarely within the usual concept of planeload charter service, since they involve the commingling of the property of the three companies on the same aircraft. The Bureau finds Zantop only conditionally qualified, not on account of any doubts concerning its financial and operating strength, but because of the carrier's "stated inability to separate its non-regulated contract services from its supplemental operations." [140] The Bureau's position is that the Board lacks the legal power to continue the exemption indefinitely, and it therefore urges that any award to Zantop be conditioned upon submission of a "demonstrated plan of feasibly

[140] Bureau's brief to the Examiner, page 37.

separating its contract operation from its supplemental services and its commitment to adhere to such special regulations and restrictions as the Board may impose." [141]

10132

As the Bureau points out, both Modern and Vance are small carriers with a history of limited civil charter sales efforts, questionable financial bases, and marginal financial condition. However, rather than restrict their period of certification, the more preferable course, and the one followed here, is to take these considerations into account by limiting the participation of these carriers to markets which will not unduly tax their resources but which will, at the same time, afford them adequate opportunities for growth. Aside from the additional burdens of litigation, short term certificates are highly undesirable as impediments both to the development of sound operational plans and the ability of the carriers to attract financing. As far as the duration of their certificates is concerned, Modern and Vance should be certificated on a basis of equality with the other successful applicants. The Board has ample power to exercise continuing surveillance over their activities in order to assure protection of the public, a power which it has not hesitated to exercise in the past.

The Bureau's arguments as to Zantop are precluded by all that has gone before. In approving the transfer of Coastal's supplemental air carrier certificate to Zantop the Board found that continuation of Zantop's automotive services while it held supplemental authority would be in the public interest. It therefore granted Zantop an exemption which was to continue in effect "for such period

---

[141] *Id.* at p. 39.

as Zantop holds authority to engage in supplemental air transportation," and the Board also imposed conditions designed to prevent any undesirable consequences that might otherwise flow from the carrier's dual operations.[142]

10133

Again, after the enactment of Public Law 87-528 and despite specific arguments directed to its alleged lack of legal authority, the Board found that (1) the automotive exemption "is, and will continue to be, in full force and effect;" and (2) there was no reason to disturb its earlier findings concerning the need for and desirability of the exemption.[143]

Nothing has occurred since the entry of Order E-18864 to change the situation from either a policy or legal point of view. There is no evidence nor even a contention that Zantop has failed to adhere to the conditions previously imposed by the Board. The only difference in the facts affecting Public Law 87-528 is that the phase-out period for individually ticketed and individually waybilled authority has expired, so that individual services are no longer available to any supplemental air carrier except to the extent that they may be authorized under section 417 of the Act. However, the imminent expiration of the transitional authority for individual services was fully known to the Board when it entered Order E-18864; and Zantop neither sought nor obtained such authority. In sum, there has been no change in the facts or the law, as the Board has interpreted it, that would support the Bureau's position.

---

[142] Order E-18318, May 9, 1962.

[143] Order E-18864, October 5, 1962.

(10133, 10134)

Financial and revenue data and other pertinent facts going to questions of qualification appear in Appendices A and C and have been considered in connection with the needs for service and the selection of carriers. Except

10134

for the applicants specifically found unqualified, it is concluded that all applicants are fit, willing, and able to receive certificates as supplemental air carriers of the kind and to the extent recommended herein.[144]

THE REGULATION ISSUES

Largely as the result of the course of the historical development of the supplemental air carriers, there is now a veritable maze of regulations which bear in varying degrees on their charter operations. Some regulatory prescriptions are included in their interim operating certificates, and those provisions together with Part 207 govern their domestic charter operations. Additional terms, conditions, and limitations of general applicability are set forth in Part 208. In addition, the transatlantic passenger charter operations of the supplementals holding such au-

[144] On brief to the Examiner Lake Central asserts, for the first time, that Purdue cannot be found fit because the applicant's own exhibits show that it violated the Act on at least 17 flights during 1963 by charging less than its published charter rates. Although Purdue's exhibits were available well in advance of the hearing, neither Lake Central nor anyone else addressed themselves to this question with evidence or argument during the course of the proceeding, and it would be obviously unfair to lend any weight to the complainant's allegations at this juncture. In any event, it seems clear that, even if established, violations of the type complained of would not be disqualifying per se in view of Purdue's otherwise exemplary record. If Lake Central is seriously concerned with the problem, ample avenues are open to it to make its complaint known to the Board's Bureau of Enforcement.

thority are separately regulated by the extensive and detailed provisions of Part 295. And finally, if, as has been recommended, supplemental air carriers are now to be permitted to perform all-expense tour charters, still further implementing regulations will be needed.

10135

While each of the existing regulations serves a specific and necessary purpose, they are not altogether compatible in degree, type, extent, or effect of their regulatory provisions. To illustrate, Part 295 sets forth in detail standards to gauge whether groups which seek to participate in transatlantic charter movements are charterworthy. Nonetheless, this is still a substantial and constantly recurring problem area. In contrast, Part 207 is of the bare-bones variety, and this regulation in conjunction with the interim operating certificates of the supplementals contains only the basic requirements that (1) domestic charter trips do not include flights for which members of the general public have been solicited, and (2) supplemental air carriers may not charter aircraft to travel agents or others who provide or offer to provide transportation to the general public. As later appears, this approach also has left sizeable voids in regulation and has given rise to troublesome problems of interpretation in determining the permissible scope of domestic charter operations.

This proceeding is not a practical vehicle for formulating an acceptable final solution for all of these varied and interrelated problems. A major difficulty has been that unlike the normal rulemaking proceeding in which a specific proposal is advanced at the outset for comment, the suggestions of particular parties for rule changes were

generally not known until after the close of the record. Some parties sought to direct themselves to these questions on brief.. Thus, for example, the Bureau appended a new 25-page proposed regulation to its brief and the applicant

World has also made detailed suggestions. However, many of the proposed revisions have not been the subject of comment or argument, much less evidence, and to this extent the present record does not provide a basis for the exercise of sound and informed judgment.

All these circumstances make it highly desirable that the Board—when the results of this proceeding are known, if not before—undertake by rulemaking proceedings a comprehensive review of all its charter regulations. Primary objectives would be to achieve as much simplification and standardization as possible, as well as to clarify the differences, if any, applicable to the charter operations of the various classes of air carriers. The greatest possible uniformity and equality of application in standards governing all of the charter operations of the supplemental air carriers would be highly beneficial to the Board, the carriers, and the public.

Pending a long term solution, some means must be devised as a temporary expedient to permit prompt implementation of the new authority recommended. The most desirable way of achieving this result would be along the lines of the method suggested by the applicant World. This would involve the recodification and expansion of Part 208 into two subparts—one generally incorporating the present provisions of the regulation, and the other a new subpart setting forth all of the requirements concerned with the

charter authority of the supplementals granted herein. The new subpart would be tailored after the existing Part 295 with such technical and substantive changes and additions as may be warranted and would be applicable to all in-

10137

terstate, overseas, and foreign supplemental air transportation, except for transatlantic passenger operations which would continue for the present to be governed by Part 295. This approach has the advantage of placing regulatory requirements relating to the operating rights of the supplementals in two regulations (Parts 208 and 295) rather than in three if the alternative of an entirely new and separate regulation were selected.[145]

Specific regulation issues will now be considered.

All-Expense Tour Charters. The threshold decision to be made with respect to all-expense tour charters is the degree of regulatory control that should be exercised over their operation, for the answer to this question will determine the type of regulation that is necessary. There are basically two alternatives. The first is the one supported by the applicants and the Bureau with some modifications —a blanket exemption regulation modeled after the proposed Part 378, which the Board proposed as an interim measure to give the supplemental air carriers all-expense tour authority for interstate and overseas supplemental air transportation pending final decision in this case.[146]

---

[145] An amendment of Part 207 may be desirable in order to make clear that henceforth it would apply only to air carriers other than supplemental air carriers. Also, Part 295 should reflect any substantive changes made here.

[146] Final action on this proposal subsequently was deferred. See SPDR-6, January 5, 1965, and SPDR-6A, April 27, 1965, Docket

Under such a regulation, any persons other than the supplementals themselves who are engaged in the formation of groups for all-expense tours (tour operators) would be

granted exemptions from the certification requirement and from otherwise applicable provisions of Title IV of the Act to the extent necessary to permit them to provide such tours using aircraft chartered from supplemental air carriers, provided that the tour operators and the carriers complied with other conditions and provisions of the regulation.

The other alternative is a prior approval procedure under which no all-expense tour charters could be operated without specific and advance Board approval. This latter alternative would obligate the Board to screen all applications individually and to grant such approvals, as well as such exemptions to individual tour operators, as it found to be in the public interest. The pre-flight authorization requirement would be analogous to the present British system and was used by the Board in connection with the interim rights granted to World and TIA authorizing the operation of planeload transpacific passenger charters until disposition of their applications for permanent certificates in this proceeding.[147]

There are, of course, substantial considerations that would support use of a general blanket exemption. Such an approach clearly would give the carriers the greatest

---

15777. While proposed Part 378 is not physically included in this record, all parties have referred to it freely throughout the course of this proceeding.

[147] Orders E-21304, September 21, 1964, and E-21574, December 9, 1964.

degree of operating flexibility; it would minimize the administrative burdens on both the carriers and the Board and remove the Board from the minutiae of day-to-day business relationships; and it would eliminate many of the last minute uncertainties that invariably arise with a prior approval procedure. Further, the general exemption reg-

ulation obviates the necessity of wrestling with difficult questions that could be presented concerning the financial qualifications and capabilities of participating tour operators.

As important as these considerations may be, they are outweighed by the clear necessity that the Board exercise firm control over the scope and direction of the all-expense tour charter program during its initial and formative stages. In short, the stakes are too high in terms of public protection and the development of a sound air transportation system to warrant general relief from regulation at this time.

History demonstrates that it is much easier and generally more satisfactory subsequently to liberalize authority as needed than to contract it, once granted. This is particularly true where, as here, the authority is novel and experimental in nature, involving many elements of the unknown and the untried. While the more reasonable expectation is that only the better qualified tour operators would seek to participate in the provision of all-expense tour charters, that result cannot be a certainty. Too little is known concerning them; and the plans of the supplementals themselves are set forth in only the most general terms. Further, although under either approach there should be

no undue adverse impact upon the certificated route carriers, the fact is that the pre-flight authorization requirement would provide the Board with more adequate means to assure orderly growth of this facet of supplemental air carrier operations in relation to other components of the air transportation system.

10140

The substantial additional burdens that would fall on the carriers and the Board from individual authorizations cannot be lightly dismissed, and it is true that such a procedure would impede the carriers' freedom of action. When, however, the choice is between minimum administrative supervision and maximum operating flexibility, on the one hand, and the ultimate in protection of the public, on the other hand, the Congress has left no doubt where the burden must fall. The essence of Public Law 87-528 is that the financial condition of any supplemental air carrier must be sufficiently strong to provide adequate and continuing protection of the public, and to this end Congress imposed the continuing fitness requirement on the carriers and gave the Board broad surveillance powers. In the all-expense tour charter the tour operator rather than the carrier becomes the real promoter with the primary financial obligation to the public, and obviously the basic statutory objectives should not be compromised indirectly by insufficient guarantees against his incompetence or financial irresponsibility. Even though many salutary conditions of general applicability can be devised, there is no escaping the fact that only by considering each individual application can the Board provide the maximum

safeguards for the public. If experience shows that the prior approval procedure is too severe and unneeded for public protection, it will be time enough then to consider its relaxation.

It is also worthy of note that problems of major concern involving the public, ticket agents, and the predecessors of the present supplemental air carriers have existed in the past. Abuses of the public perpetrated by certain ticket agents became so prevalent and so aggravated at one time

10141

that sections 411 and 902(d) of the Act were amended to bring ticket agents within their coverage, and the Board since has been especially vigilant in such matters.[148] Individual authorizations for tour operators participating in all-expense tour charters should prevent the creation of a breeding ground for any comparable activities.

In form, the prior approval procedure should make the filing of an application for a Statement of Authorization (and an exemption for the tour operator) and the issuance of such authorizations prerequisites to the operation of all-expense tour charters, much in the manner of the provisions governing the interim authority now held by TIA and World for transpacific planeload passenger charters. The regulation should also prescribe general conditions and requirements that must be met by any applicant. If, upon consideration of an application, the Board found that the proposed all-expense tour charter flight or flights complied

[148] Public Law 538, 82nd Cong., 2nd Sess., approved July 14, 1952. See *e.g.*, S. Rep. No. 1508 (S. 2690), 82nd Cong., 2nd Sess. (1952); H. R. Rep. No. 2420 (S. 2690), 82nd Cong., 2nd Sess. (1952).

with those requirements and were otherwise in the public interest, it would issue the Statement of Authorization and any necessary exemption. The Board would, of course, reserve in its regulation the right to withhold, condition, or limit any particular authorization as the public interest might dictate. The provisions for individual applications necessarily would require not only a showing of compliance with all general regulations but would also call for

10142

the disclosure of any needed information concerning the operating carrier and the tour operator, the promotional literature to be used in promoting the tour, etc.

It is of the utmost importance that the substantive regulatory provisions be of such a nature that they will maintain the integrity of the group concept while, at the same time, affording the opportunity for operation of an attractive and marketable service without undue diversionary consequences. Subject to needed revisions to reflect the change from a blanket regulation to individual authorizations for carriers and tour operators, many of the provisions of proposed Part 378 are acceptable in their present form. Included in this category are most of the definitions in the proposal as well as the provisions concerning the execution of charter contracts, the filing of tour literature, tariffs, surety bonds, contracts between tour operators and tour participants, post flight reporting, waivers, enforcement, and the issuance of advisory opinions. For the most part the parties have not seriously contested these proposals.[149]

[149] ASTA opposes the condition calling for a surety bond in the amount of twice the aircraft charter price and suggests that the

10143

The real controversy centers around the way in which all-expense tours and all-expense tour charters should be defined, specifically (1) the duration and stop requirements that should be imposed, (2) the number of groups that could be transported on a single aircraft, and (3) the price to be charged the passenger. On the first point, views range from a tour duration of no less than seven days, with no multiple stop requirement, to the 10-day, three-stop minimum suggested in proposed Part 378.

A requirement that all-expense tours involve at least seven days, with overnight hotel accommodations at a minimum of two cities of destination no less than 50 miles from each other, is realistic in the light of all the evidence. The most productive all-expense tours, at least initially, are likely to be of the resort type where the passenger's interest is more in relaxation than in sightseeing as such. Tours that involve the minimum in moving about, as well as relatively short duration, have the greatest potential for accommodating that interest. The two-stop provision should be sufficient to prevent any significant inroads on purely point-to-point transportation without, at the same

---

face amount of the bond be reduced to one-half the aircraft charter price, with an option in the tour operator alternatively to create a trust account consisting of one-third of his receipts from the sales of the tour. The bonding provisions suggested by the Board are patterned after those of the Interstate Commerce Commission and there has been no convincing demonstration that they are excessive. Further, since the financial capability and reliability of the tour operator are likely to be the points of greatest vulnerability in the all-expense tour charter program, the wiser course is to maintain high standards in this respect until actual experience indicates that less exacting requirements will be fully adequate to safeguard the interests of the traveling public.

time, destroying the attractiveness of the tours for resort-minded travelers.

As far as duration is concerned, a substantial segment of the business community grants vacations by the unit of one week or more, and the evidence of the Joint Intervenors themselves shows that a large number of the tours now offered are for seven days. If the supplementals are given the authority to provide tours for a week or multiples thereof, they will achieve significantly greater operating flexibility, particularly in organizing their operations on

10144

a "back to back" basis and thereby holding ferry mileage to a minimum. Also, it is not to be forgotten that the primary promotional aim of the all-expense tour charters is to broaden the base for air transportation generally, and that to accomplish this purpose it will be necessary to reach the younger and lower income individuals. To them not only price, but also shorter tour durations to meet business vacation periods, can be decisive considerations. Any duration and minimum stop requirements which are more restrictive than those recommended will considerably narrow the markets open to the supplementals and will also substantially reduce the economic value of all-expense tour charter authority to the carriers themselves.[150]

---

[150] Some parties, although acknowledging that multiple stops may generally be a necessary requirement, contend that single destination tours should be permitted under certain circumstances. Thus, for example, ASTA takes the position that they should be permitted when the point of destination "has no regular scheduled air service direct from the point of origin" (ASTA brief, p. 8), and AAXICO requests the right to operate them "where no U. S. flag carrier performs scheduled one-plane-through service between any point within a 75 mile radius of the point of origin and within a 75 mile

While it already has been concluded that the supplemental air carriers should not be permitted to commingle tour groups aboard the same aircraft under split charter arrangements with different tour operators, no persuasive reasons have been advanced for precluding a supplemental air carrier from carrying more than one all-expense tour group on a single aircraft where the entire aircraft is being operated under one charter with one tour operator. In

10145

such a situation there is not the same danger to the integrity of the group concept. And the carriers, of course, would benefit greatly from the increased measure of operational freedom, particularly in the operation of sightseeing as contrasted to resort type tours. Further, with the ever expanding seating capacity of jet aircraft, which are increasingly in demand, insistence on the one-aircraft, one-group formula would restrict the economic feasibility of the sale and promotion of tour charters and might well unduly magnify problems involved in the ground portion of the tours, such as those associated with hotel accommodations and surface transportation. A restriction that would limit the use of a single aircraft to three all-expense tour groups where the aircraft is operated under one charter to one tour operator, with each group to consist of 40

---

radius of the point of destination of the inclusive tour charter air transportation" (AAXICO brief, p. 35). As is readily apparent, any provision along these lines would present substantial problems of language and interpretation. This type of authority is not essential to the initial all-expense tour charter program but is a matter of liberalization that can best be considered later after some actual operating experience under the regulation.

or more passengers, is a reasonable resolution of the problem under all the circumstances.

There is wide variance in the evidence and the positions of the parties concerning the price that should be charged the all-expense tour charter passenger. At the lower end of the scale is the actual practice of European countries. Sweden, for example, apparently permits a total package price of roughly 75 percent to 80 percent of the individual fares for scheduled service. In Great Britain, where inclusive tours have been eminently successful in traffic development, the rule generally is that the tour must cost the passenger not less than the lowest published round trip air fare between the points served on the day and at the time of flight. On the other end of the spectrum is the cost proposal advanced by the Board in proposed Part 378, *i.e.*, the charge for the tour must be at least 120 percent of the lowest basic fare (excluding promotional and dis-

count fares) which would be charged by the scheduled carriers for the air transportation provided on the tour. Several other alternatives have been put forth that fall somewhere between these extremes.[151]

---

[151] ASTA, for example, suggests the following three alternatives without endorsing any particular one: (1) 100 percent of the lowest scheduled individual or group fare plus 3 percent of such fare for each day of tour duration; (2) 100 percent of the basic fare, or in the alternative, 125 percent of a discount fare, whichever is lowest; and (3) a sliding scale under which the ground elements shall cost at least $15 if the lowest available basic scheduled fare is $75 or less, 20 percent of the air fare when such fare is between $75 and $175, and $35 where the lowest air fare is $175 or more. The latter alternative is taken from the ATC resolution defining independent tours for the purpose of determining the 3 percent tour override commission.

The matter of price is the most significant single key to successful all-expense tour charter development, and it presents a particularly difficult determination in view of the lack of any empirical basis for judgment in American air transportation experience. The method proposed by the Board of pegging the price to a percentage of basic fares for scheduled services is a desirable one, since it has the advantages of simplicity and ease of application. Weighing all the considerations, however, it is concluded on the basis of the present record that the particular percentage of 120 percent is too high to permit significant tour charter development. Such is the opinion of travel agents which would be concerned with the problem, a factor that is entitled to at least some weight. Further, while there are obvious differences, the British experience demonstrates at the least that the remarkable development of inclusive tours there has been achieved with no serious injury to the

scheduled carriers, even though the inclusive tour charter cost is computed at the level of 100 percent of the scheduled fares and there are no formal tour duration or multiple destination requirements.

A reasonable middle ground for launching the all-expense tour program, and the one recommended here, is a charter tour price determined on the basis of 110 percent of the lowest basic air fare, provided, however, that the ground elements shall cost at least $15. Such a provision would moderately enhance the price appeal and marketability of all-expense tour charters without otherwise disturbing the basic factors which distinguish them from individually ticketed travel, and the certificated route carriers would

still maintain the advantage of their promotional and other discount fares. Since all-expense tour charters would be authorized individually rather than by blanket exemption, the Board would be in a position to exercise any control necessary to assure that they are not unduly diversionary or harmful in other respects to the total air transportation system.

Other Charter Services. Apart from all-expense tour charters, virtually all the evidence concerning regulation issues has been directed to the narrow but highly significant area of mass media advertising in domestic charter movements or closely associated problems of solicitation of the general public and carrier-agent relationships. It is clear from the record that in the past the supplemental air carriers have been unable to exercise effective control over questionable advertising practices and other improper or undesirable activities of charter organizers and agents, a result that no doubt has been due in significant measure

to the absence of the same degree of specificity and detail in rules governing domestic charters as exists in Part 295 regarding transatlantic passenger charters.

During the pendency of this proceeding the Board amended Part 207, Part 295, and the interim certificates and authorizations of the supplementals to prohibit generally the operation of charter flights advertised in mass media, regardless of whether the advertisements are directed to members of specific groups or to members of the general public.[152] Since there is a clear and undisputed

[152] ER-408 and 419 as amended by ER-427 and 428 effective March 15, 1965; Orders E-21610, December 23, 1964, and E-21837, February 25, 1965.

need to carry over the same prohibition in any regulations adopted here, no useful purpose would be served by simply reciting the evidence in this proceeding which corroborates the Board's determination.

Most of the other problem areas are fairly reflected in an advisory letter of the Board's then Director, Bureau of Enforcement, which was received in evidence and used as the basis for questioning many of the participating witnesses.[153] This letter outlined various objectionable practices that were prevalent in the organization, solicitation, and operation of domestic charter flights by the supplemental air carriers, including the following: (1) advertising charter flights, using the names of participating organizations, before a firm commitment had been concluded with an air carrier for their operation and without specifying the air carrier or noting its designation as a supplemental

10149

air carrier; (2) soliciting organizations that by reason of their extremely large size, their perfunctory or automatic membership requirements, or the vagueness of their identity were not charterworthy but in fact constituted segments of the general public; (3) permitting the participation of persons on charter flights who were not members of the chartering organization when the charter agreement was executed but who joined subsequently as the result of the inducement of the advertised charter flight; (4) for charters entered into on behalf of a single chapter, soliciting the participation of members of another chapter or chapters

[153] Letter of J. G. Adams, Director, Bureau of Enforcement, December 11, 1964, to Capitol, World, and TIA (JI-1158).

of the same national or regional organization for whom the agent executing the charter agreement had no authority to act; (5) undue flexibility in the pro rata charter price or the guarantees made in connection therewith, which resulted in (a) the total cost of the package attributable to air transportation not being clearly ascertainable by dividing the air carrier's charter price by the number of passengers, (b) arbitrary adjustments of the price for the land portion on the basis of the number of seats actually sold, (c) failure to pass along any excess of amounts collected above the total package price to the passengers, and (d) express or implied guarantees as to the number of passengers and amount of revenue which made the agent, rather than the signatory charter organization, the real charterer; and (6) the return of funds collected from the charter group to the sponsoring organization under circumstances where it might be reasonably concluded that such a "donation" was either compensation for use of the sponsor's name or an unlawful rebate to the individual participants.

10150

The regulatory tools for coping with many of these difficulties will be provided if, as has been recommended, the basic scheme of Part 295 is extended to govern the interstate, overseas, and other foreign supplemental air transportation operations of the supplemental air carriers. The mass media prohibition now in Part 295 is directed to a type of activity which is a primary cause of widespread membership ineligibility (section 295.2(l)(1)); and the regulation is also clear in its requirements that (1) vague and ill-defined organizations are not charterworthy (sec-

tion 295.2(l)(2)), (2) participating members of a chartering organization must have been members at the time the chartering organization first gave notice to its members of firm charter plans (sections 295.2(k), 295.35(b)(1) and (d)), and (3) charges and collections in excess of the charter cost must be refunded to the charter participants (section 295.33(b)). However, in order to meet still other problems, additional provisions should be adopted which would specifically (1) prohibit all donations by travel agents to chartering organizations or groups and (2) limit participation in any given charter solely to the organization, or chapter or unit thereof, whose name appears on the contract with the air carrier as the charterer. Although there will always be questions of degree and difficulties of interpretation, provisions of this general type should be of

substantial assistance in eliminating many evils and will provide a sound basis for regulation.[154]

In addition to the foregoing there are numerous further proposals for amendments and changes in governing

[154] A related proposal supported by the Bureau, TIA, and World is the elimination of the so-called six months' rule. The present Part 295 requires not only that members of a chartering organization hold their membership when firm charter plans are announced but also creates an adverse presumption if they have not been members for at least six months prior to the starting flight date. While the evidence is not directed specifically to the six months' rule, the fair inference to be drawn from the record as a whole is that the six months' provision is unduly onerous, of little practical utility, and of doubtful enforceability. The requirement that a member participating in a charter flight have membership status when the flight is first arranged should be a sufficient demonstration of bona fide membership if the provision in the regulation for maintenance of a central membership list is retained.

regulations. The Bureau, for example, would (1) prohibit the payment of any commissions by a chartering organization to a travel agent; (2) relax the reporting requirements; (3) remove the labor charge ceiling and substitute a new formula for determining administrative costs; and (4) permit mixed passenger and cargo flights. The applicant World advocates (1) expanding the coverage of the definition of "immediate family" for the purposes of charter participation; (2) modifying existing provisions concerning charter costs and administrative details; (3) raising the commission payable by carriers to travel agents from 5 percent to 7½ percent; and (4) other miscellaneous changes, such as shortening the advance filing requirements when waivers are requested, eliminating the need for the

10152

"Statement of Supporting Information," and revising the tariff provisions governing the computation of ferry mileage. TIA would go still further on the carrier-agent commission and permit a maximum of 10 percent, and it also supports a new sliding scale for computing permissible administrative costs. While some or all of these suggestions may have merit they have not been the subject of evidence, comment, or argument in this case. Under the circumstances, the Board can best consider and evaluate them in connection with subsequent rulemaking proceedings.

The Recommended Regulation Changes. The regulatory provisions which have been recommended bear in varying degrees on substantially all of the present system of regulations governing supplemental air carriers. As noted initially, those particularly affected are Parts 207, 208, and 295. A new set of provisions must also be devised

for all-expense tour charters, and more refined and detailed requirements are necessary for other charter services. The Board, of course, has wide latitude in determining the form that regulations growing out of this case should take, and the ultimate determination of how best to proceed may be influenced substantially by the scope of the authority granted, particularly as it relates to all-expense tour charters and the extension of charter authority to the carriage of passengers in overseas and foreign air transportation.

Considering the wide range of possibilities, little purpose would be served by encumbering this decision with the physical reproduction of the various and sundry regulations that will be necessary if a particular technique is selected and the precise recommendations made are adopted. Such regulations are voluminous and detailed;

10153

some needed changes are purely technical in nature; and a good many involve no more than physical transference of the existing provisions of Part 295 and the proposed Part 378. And, in view of the nature of this proceeding, the Board will, of course, have the benefit of exceptions, briefs, and argument directed to these matters. What is important for present purposes is the substantive content, and that subject already has been considered in detail.

Attached as Appendix F is a summary which outlines the various recommendations made with respect to the regulation issues and relates them to the present and proposed regulatory scheme. This appendix should provide the basis for translating such recommendations into regulation form to accompany the final decision in this proceeding.

(10153, 10154)

The Certificates

The remaining questions relate to the certificates to be issued for supplemental air transportation, principally to their form and duration.

The present interim certificates and authorizations of the supplemental air carriers were predicated on the authority of Public Law 87-528. With the transition to certificates of public convenience and necessity which will be issued pursuant to the Federal Aviation Act itself as amended by that law, some changes are necessary or desirable. Authorizations must now be expressed in two certificates, one embodying the supplemental air transportation that the Board may authorize and the other setting forth the authority granted which is subject to the approval of the President pursuant to section 801 of the Act. In addition,

10154

the certificates can be simplified considerably. Some of the provisions of the interim certificates are now more appropriate for inclusion in a general regulation, such as those dealing with the use of certificated names by supplementals, written agreements with ticket agents, transfers of control, and some of the definitions; and others are no longer necessary, notably those which reiterate the statutory language concerning continuing fitness and the modification, suspension, or revocation of certificates. Recommendations on these matters are reflected in the form of certificates attached hereto and in the suggested regulation changes set forth in Appendix F to this decision.[154a]

[154a] The attached certificates have been drawn on the assumption that the seasonal transatlantic authority granted American Flyers, Modern, TIA, and World will have expired by its own terms before the Board reaches final decision herein.

As far as duration is concerned, the objective must be to attain as much permanency and stability as can be achieved consistently with the public interest. Apart from all-expense tour charters, permanent certificates are clearly warranted in the interstate and military fields. The supplemental air carriers had demonstrated by their past charter operations in these areas that they are performing a useful public service responsive to a public need and the interests of the national defense without any significant adverse impact on the balance of the air transportation system. Split charter authority with respect to conventional passenger charters is basically no more than a refinement of authority presently held, granted in recognition of the advances in aviation technology. No reasons have been advanced on this record that would justify qualifying the future participation of the supplementals in domestic and military air transportation.

10155

With respect to the balance of their authority, however, the more persuasive considerations point to some limitations on duration. All-expense tour charters, both domestically and internationally, are a new concept in the American air transportation system. Much is yet to be learned about such tours, and the provision of adequate assurances for public protection looms as an overriding element in the total picture. Similarly, although there are less uncertainties in the case of traditional charters, it is true that, in contrast to prior limitations which permitted only relatively minor participation by the supplementals in foreign civil passenger transportation, such carriers would now be extended on a selective basis into all areas of the world open to them under the issues in this proceeding. In short, despite the abun-

dance of promotional and experimental considerations that support the authorization of both all-expense tour charters and conventional overseas and foreign charter operations, these particular services have yet to withstand the acid test of actual operating experience in untried areas.

The foregoing are all factors which dictate caution in the exercise of the Board's certification power. Under all the circumstances, it is concluded that any advantages for the carriers from permanency with respect to all-expense tour charters and other civil charter authority in overseas and foreign air transportation are outweighed by the considerations favoring certificates of limited duration. The latter course will permit a review of operations after an experimental period and will provide for development in the manner most consistent with the broader public interest.

10156

Certificates for five years, which was the duration specified by the Board in issuing supplemental air carrier certificates for transatlantic passenger charter operations, should allow for an adequate experimental period.[155]

Two other matters warrant brief comment. On brief, eight of the local and short haul carrier intervenors attack the legality of all-expense tour charters on grounds previously considered and rejected.[156] In addition, while conced-

[155] *Cf. Transatlantic Charter Investigation*, Orders E-20530 and 20531, March 3, 1964 (Appendix A, pages 28-29).

[156] These intervenors also make the novel contention that all-expense tour charters would in reality be "special services" which are reserved to the certificated route carriers pursuant to section 401(e)(6) of the Act. However, the prior discussion makes it clear that under the terms and conditions recommended all-expense tours provided by chartering aircraft to tour operators, rather than

ing that there is room for some conventional charter service by supplementals, they suggest that a limitation be placed in the certificates which would confine supplemental authority to charter flights involving a one way haul or more than 500 air miles. They assert that such a limitation would afford the locals a modicum of protection against diversion of traffic from their scheduled services.

No need has been shown for any such restriction and its adoption would unnecessarily restrict the flexibility and utility of supplemental air transportation services. The past operations of the supplementals have had no significant impact upon the local service carriers; as to the future, these intervenors present no estimates of actual diversion

but only surmise. Further, as the objectors themselves concede, the predominant past use and greatest future potential for supplemental services are in the realm of long haul services, in which case the local carriers have nothing to fear from their operation. And the particular terms, conditions, and regulations recommended will, of course, minimize still further any diversionary consequences. Insofar as these intervenors are contending that the supplementals have not shown that specific transportation needs exist in particular short haul markets, the short answer is that they are not required to do so, any more than the certificated route carriers have been required to make an independent showing of need with respect to each and every operation

---

through promotion and sale by the supplementals themselves, have sufficient cohesiveness to qualify as legitimate charters within the statutory concept.

that is possible under their certificates. In sum, the general considerations supporting the award of certificates for supplemental air transportation afford no sound basis for differentiation predicated on the length of haul involved.

The applicant World, standing alone among the applicants, suggests that it and carriers similarly situated be designated, presumably in their certificates, as "independent air carriers." The only reasons given are that World prefers such a designation and it is one of common usage in the British air transportation system.

This suggestion is rejected. While in the developmental period the Board was free to and did select various designations for this group of carriers, such as "nonscheduled," "large irregular," and the like, the term "supplemental air carrier" is now ingrained in the statutory scheme with a

10158

fixed meaning and content. Deviations are inconsistent with the statutory purpose, and the use of additional designations in all likelihood would enhance rather than alleviate any public confusion. In any event, the reasons advanced for this request are neither substantial nor persuasive.

Summary of Findings and Conclusions

Upon the basis of the foregoing and all the facts of record, it is recommended that the Board find that:

1. The public convenience and necessity require the issuance of certificates in the form attached hereto to

(a) American Flyers, Capitol, Johnson Flying Service, Modern, Purdue, Saturn,[157] Southern, Trans Interna-

[157] The merged Saturn-AAXICO, as proposed in Docket 15675.

tional, Vance International,[157a] World, and Zantop authorizing supplemental air transportation between the 50 States and the District of Columbia with respect to persons and property;

(b) Johnson Flying Service and Purdue authorizing supplemental air transportation with respect to persons and property between the United States and Canada;

(c) American Flyers, Modern, Vance International, and Zantop authorizing supplemental air transportation with respect to persons and property between the United States, on the one hand, and points in Canada and Mexico, on the other hand;

10159

(d) American Flyers, Capitol, Saturn,[158] Southern, TIA, and World authorizing supplemental air transportation with respect to persons and property between the United States and the Caribbean area;[159]

(e) Trans International and World authorizing supplemental air transportation with respect to persons and property between the United States, on the one hand, and points in Central and South America, on the other hand;[160]

[157a] The proposed order would continue Vance's existing exemption permitting it also to conduct operations as an air taxi operator.

[158] See f.n. 157, *supra*.

[159] A point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

[160] A point or points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama,

(10159, 10160)

(f) Southern, Trans International, and World, authorizing supplemental air transportation with respect to persons and property between the United States, on the one hand, and points in the Transpacific area, on the other hand;[161]

(g) Capitol and Saturn authorizing supplemental air transportation with respect to property only between the United States, on the one hand, and points in the Transatlantic area, on the other hand;[162] and

10160

(h) all of the foregoing carriers authorizing air transportation with respect to persons and property on a planeload basis pursuant to contracts with the Department of Defense, without geographical or duration limitations.

2. The carriers listed in paragraph 1. hereof are each citizens of the United States within the meaning of the Act, and are fit, willing, and able properly to perform the supplemental air transportation hereinabove recommended to be performed by each of them and to conform to the pro-

---

and in the countries on the continent of South America, on the other hand.

[161] American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and a point or points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east, on the other hand, via a transpacific routing.

[162] Between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

visions of the Act and the rules, regulations, and requirements of the Board thereunder.

3. The supplemental air transportation permissible under the aforesaid certificates authorizing passenger and property services shall include authority to provide (1) conventional planeload passenger and cargo charters; (2) split charters with respect to conventional passenger charters, provided that a maximum of three groups, with each group to consist of 40 or more passengers, can be carried aboard the same aircraft; and (3) all-expense tour charters to tour operators.

4. Except for all-expense tour authority, the aforesaid certificates authorizing supplemental air transportation between the 50 States and the District of Columbia should be permanent. Domestic all-expense tour authority, and all certificates for overseas and foreign supplemental air transportation, should be granted for an experimental period of five years.

5. The public interest requires that the Economic Regulations governing supplemental air carriers be revised, supplemented, and reissued in accordance with the recommendations set forth in Appendix F hereto.

10161

6. Conner Air Lines, Inc., Holiday Airways, Inc., Overseas National Airways, Inc., Standard Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc., do not possess the qualifications necessary for certification

(10161)

as supplemental air carriers and their applications should therefore be denied.

7. Except to the extent otherwise indicated, all applications, motions, and requests involved in this proceeding should be denied.

Appropriate orders and certificates are attached.

/s/ ROBERT L. PARK
Robert L. Park
Hearing Examiner

Attachments

10162

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That a certificate of public convenience and necessity for supplemental air transportation in the form attached hereto be issued to each of the following: American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc.,[1] Southern Air Transport, Inc., Trans International Airlines, Inc., Vance International Airways, Inc., World Airways, Inc., and Zantop Air Transport, Inc.;

---

[1] The merged Saturn Airways, Inc.-AAXICO Airlines, Inc., as proposed in Docket 15675.

(10162, 10163)

2. That said certificate shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on ;

3. That upon the effective date of this order or of the order issued in this proceeding directing the issuance of certificates of public convenience and necessity for overseas and foreign supplemental air transportation, whichever shall later occur, the interim certificates and interim authority of the supplemental air carriers listed in paragraph 1 hereof shall cease to be effective;

10163

4. That, unless sooner terminated the exemption issued to Vance International Airways, Inc., as the successor to Vance Roberts, pursuant to Orders E-19112, December 19, 1962, and E-21648, January 6, 1965, which exempts the carrier from the provisions of Title IV of the Act and section 298.2(a)(2) of Part 298 to the extent that they would otherwise preclude it from operating air taxi services pursuant to Part 298 while holding supplemental air carrier authority, shall continue in effect so long as Vance International Airways, Inc., holds an effective certificate to engage in supplemental air transportation; and

5. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[NAME OF HOLDER]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

2. Interstate air transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense except to the extent that such air transportation involves operations between

(10164, 10165)

places in the same Territory or possession of the United States, subject to the provision that any such services performed between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

10165

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the services authorized herein are subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for interstate supplemental air transportation.

(2) Nothing in this certificate shall be construed (a) as authorizing air transportation within the State of Alaska, or (b) as granting an exemption from the provisions of section 403 of the Act.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms,

conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on : *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time; and *Provided Further,* That the authority granted by this certificate authorizing the holder to operate all-expense tour charters in accordance with the applicable provisions of the Board's Economic Regulations shall terminate five (5) years after the effective date hereof.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of

HAROLD R. SANDERSON
Secretary

(SEAL)

(10166)

10166

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc.,[1] Southern Air Transport, Inc., Trans International Airlines, Inc., Vance International Airways, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

---

[1] The merged Saturn Airways, Inc.-AAXICO Airlines, Inc., as proposed in Docket 15675.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on ;

3. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied;

10167

4. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

.....

.....

(10168)

10168

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

PART I—CHARTER SERVICE

American Flyers Airline Corp., is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and

(a) points in Canada and Mexico, on the other hand;

(b) a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba,

the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

10169

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and for-

(10169)

eign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance; performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on
and the authority granted by paragraph 1. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of
(Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of

the Board, and the seal of the Board to be affixed hereto, on the day of

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

(10170)

10170

(Capitol and Saturn)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[NAME OF HOLDER]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. Supplemental air transportation with respect to property between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

3. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules,

regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the

(10171)

Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraphs 1. and 2. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

10172

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of .

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

(10173)

10173

(Johnson and Purdue)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[NAME OF HOLDER]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.

2. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations

between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

10174

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(10174)

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraph 1. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of .

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

10175

(Modern, Vance, and Zantop)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[NAME OF HOLDER]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.

2. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the

(10175, 10176)

extent that such planeload services involve operations between places in the same Territory or possession of the United States, subject to the provisi[illegible] that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

10176

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued

pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraph 1. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

(10177)

10177

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SOUTHERN AIR TRANSPORT, INC.

PART I—CHARTER SERVICE

Southern Air Transport, Inc., is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and a point or points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east, on the other hand, via a transpacific routing;

(b) a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. The transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable

rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(10178)

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraph 1. of Part I hereof shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order

authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

10179

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in der E-

(10180)

10180

(TIA and World)

Issued pursuant to
Order No. E-

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

[Name of Holder]

PART I—CHARTER SERVICE

[NAME OF HOLDER] is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Public Law 87-528 and Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in the following:

1. Supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and

(a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and a point or points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east, on the other hand, via a transpacific routing;

(b) a point or points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Wayward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) a point or points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. The air transportation of persons and property on a planeload basis pursuant to contracts with the Department of Defense in overseas and foreign air transportation, and in interstate air transportation to the extent that such planeload services involve operations

between places in the same Territory or possession of the United States, subject to the provision that any such services shall be furnished at the rates and compensation and in accordance with the terms specified in such contracts. The rates and compensation specified in such contracts shall be computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders. For the purpose of this Part, the term "planeload basis" refers to air transportation pursuant to contracts with the Department

(10181)

of Defense where the entire capacity of one or more aircraft has been engaged by the Department.

PART II—TERMS, CONDITIONS, AND LIMITATIONS

This certificate, and the service authorized herein, is subject to the following terms, conditions, and limitations:

(1) The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for overseas and foreign supplemental air transportation other than transatlantic supplemental air transportation.

(2) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board, including but not limited to standards relating to liability insurance, performance bonds, minimum extent of service, and continuing fitness.

This certificate shall be effective on and the authority granted by paragraph 1. of Part I hereof

shall terminate five (5) years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

10182

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

10183

Appendix A

THE APPLICANTS*

AAXICO Airlines, Inc.

AAXICO is a frontrunner among the more stable and successful of the existing supplemental air carriers. Mr. Howard J. Korth, who was a co-founder of AAXICO in 1946 and has continuously controlled the corporation, throughout the years has retained experienced managerial and operational personnel, many of whom have ten or more years with the company. Originally a nonscheduled cargo carrier, AAXICO was certificated in 1955 to provide a scheduled air cargo service. When in 1962 its certificate for such service was not renewed, the carrier was awarded interim operating authority as a supplemental air carrier.[1] There is nothing in the history of AAXICO's operations that for present purposes would reflect adversely on its compliance disposition.[2]

---

* Numerous references are made throughout to Board orders granting interim operating authority or certificates. Unless otherwise indicated, the reference is only to the initial authorization and subsequent amendments should be consulted to ascertain the exact scope of present authority.

[1] See *North-South Airfreight Renewal Case*, 22 C. A. B. 253 (1955); *Airfreight Certificate Renewal Case*, 23 C. A. B. 186 (1956); and *Domestic Cargo-Mail Service Case*, Orders E-18300, May 3, 1962, and E-18534, June 29, 1962. Interim operating authority was issued by Order E-18873, October 5, 1962.

[2] The carrier was found guilty of economic violations occurring in the 1957-1958 period and one cease and desist order was issued by the Board. See Orders E-16475, March 6, 1961, and E-16690, April 20, 1961. In addition, since 1959 the carrier has been cited

(10183, 10184)

From the inception of its operations in 1947 AAXICO's air transport activities have been concentrated primarily on conducting extensive worldwide military contract operations and on providing a more limited domestic civil cargo service. Between 1952 and mid-1963 the military services alone accounted for $52,000,000 in gross revenues. Since the change of classification in 1962 to that of supplemental air carrier, the military dominance has continued, with the result that in 1962 and 1963 99.0 percent or better of AAXICO's total transport revenues have been derived from this source. To illustrate the point another way, in 1963 the carrier performed no civil passenger charters and only $89,000 of its total transport revenues of $3,643,000 were attributable to civil air cargo movements. AAXICO has consistently engaged in some nontransport activities, primarily the purchase, sale, and lease of aircraft.

10184

The applicant's total aircraft fleet is company-owned and consists of two recently acquired convertible DC-7-C/F aircraft, eight DC-6A's (convertible), and 17 C-46F's. Assuming its continuance as a separate entity and the award of inclusive tour and split charter authority, AAXICO proposes to acquire three DC-6B aircraft and would require some 20 additional employees in sales and traffic. The applicant forecasts revenues from these sources for 1965 of $2,745,358, total operating expenses of $2,497,365, for a net profit of $123,997. There are no definitive plans for the acquisition of jet aircraft.

---

for some 12 safety violations which resulted in the issuance of letters of correction or reprimand and civil penalties totaling about $4,800.

(10184)

Over the years AAXICO has maintained a solid financial status by all yardsticks of evaluation, with a strong cash and working capital position and little or no long term debt. Its cash balance on hand or in banks as of December 31, 1963, totaled $4,810,975. Except for a net loss of $150,000 in 1961, in the entire period from 1957 through the second quarter of 1964, AAXICO has experienced a net annual profit ranging normally between $500,000 and $1,000,000. The carrier's only real problem has been the high percentage of military revenues, which are subject to possible substantial reductions if the Department of Defense carries out its "30% commercial" policy.

Like the other applicants, AAXICO desires permanent certification. It also advocates the addition of (1) split charter and inclusive tour authority, (2) the right to charter to airfreight forwarders, and (3) continuation by the Board of regulatory requirements generally of the type applicable to transatlantic passenger charters. The applicant assumes that only the strongest carriers financially will be selected and that the same passenger and cargo authority will be granted to each, without geographical limitations.

On November 10, 1964, AAXICO and Saturn Airways, Inc., another applicant in this proceeding, filed a merger agreement.[3] An Examiner's Initial Decision favoring approval has been issued. Under this agreement Saturn would be the surviving corporation and would be controlled by Howard J. Korth who would hold better than 90 percent of the outstanding stock. According to the parties, their existing operations are complementary and the

[3] Docket 15675.

merger would permit the conduct of a balanced program of passenger and cargo charter operations. It would also permit AAXICO to eliminate its disproportionate reliance on military revenue while providing Saturn with the financial strength it presently lacks. All existing employees would be retained and no additional sales and traffic personnel would be necessary. The merged company forecasts a net profit from the grant of inclusive tour and split charter authority of some $208,675 for 1965. It would be the intention of the merged company to acquire jet aircraft for 1966 operations.

10185

American Flyers Airline Corp.

This applicant is the creation of Reed Pigman, who has a background of some 40 years of aviation experience. Mr. Pigman established an aviation training school at Meacham Field, Ft. Worth, Texas, in 1939, which has since become the largest civilian school in the world specializing in flight training. At the end of World War II, Mr. Pigman's charter operations with DC-3's developed into the present airline, which has evolved progressively through the stages of designation as a large irregular air carrier to its present status as the holder of supplemental air carrier interim operating authority.[4] Mr. Pigman has retained a compe-

[4] Applicant's interim certificate was granted by Order E-18872, October 5, 1962. Separate corporations are now utilized for the activities of the training school (American Flyers, Inc.) and the airline (American Flyers Airline Corp.), both of which are owned and controlled by Mr. Pigman. As stated by one of the applicant's witnesses, in practical effect all profit and loss funnels directly to Mr. Pigman through these entities.

tent staff of experienced managerial, operational, and technical personnel, and throughout its existence the operations of the airline have not presented any significant economic or safety enforcement problems.[5]

The airline's administrative offices are located at Meacham Field, and at Ardmore, Okla., it maintains extensive facilities, including hangar space, for maintenance, overhaul, and fuel storage. Its fleet consists of aircraft with seating capacity of from 28 to 105 passengers—two L/149's, two L/049's, four L/1049's, and two Electras. All of the foregoing are owned by the company and, in addition, it operates four DC-3 aircraft leased from Mr. Pigman. The applicant is interested in obtaining convertible pure jet aircraft but has not developed concrete plans to acquire them.

American Flyers traditionally has been a passenger charter airline concentrating in the domestic field, with only occasional participation in the business of transporting individually ticketed passengers before that source of revenue became unavailable to the supplementals. More recently, however, about two-thirds of the carrier's transport revenues for interstate air transportation services have been derived from military CAM flights, as indicated below:

---

[5] There is no record of economic violations by the applicant. On the safety side, since 1957 several letters of correction or letters of reprimand have been issued and some $5,300 in civil penalties assessed. The applicant presented for the record its own explanation for these occurrences, none of which involved suspension of its operating authority.

10186

	Passengers		Revenue	
	Civil	Military	Civil	Military
1961	5,594	21,118	$257,896	$ 935,670
1962	9,239	28,414	338,371	1,363,889
1963	16,578	41,307	644,991	1,652,575

Operations in overseas and foreign air transportation, while not extensive, have been more sizeable than most.[6] Recently the carrier was granted interim certificate authority to operate transatlantic civil passenger charters during the 1965 summer season.[7]

In 1963 the applicant substantially accelerated its program for civil passenger charters, with the ultimate goal of obtaining at least 50 percent of its transport revenues from the civilian market. Company personnel and aircraft seat-mile capacity were almost doubled in 1964 over 1963, and several new sales offices have been opened.[8] The geographic scope of civil operations has also broadened, as charter flights have been operated or scheduled in 1964-1965 for such destinations as Hawaii, Mexico, Jamaica, the Bahamas, Puerto Rico, and Canada. Actual mid-year 1964 operating results show some $550,000 in civil passenger revenues, and the applicant estimates that such revenues for the full year will reach $1,864,000, more than double the comparable revenue figure for 1963.

---

[6] Passenger flights to and from Canada produced revenues of $8,848 in 1961, $15,944 in 1962, and $43,695 in 1963.

[7] Order E-22260, June 2, 1965.

[8] In addition to its principal offices at Ardmore and Fort Worth, American Flyers has sales representation in Washington, D. C., New York City, Chicago, Houston, Los Angeles, San Francisco, and Toronto, Canada. Additional sales personnel are contemplated for San Diego, New Orleans, and Atlanta.

(10186, 10187)

Although the applicant has operated successfully since its inception, its profit picture has been spotty and the carrier has had chronic difficulty with working capital. As shown in Appendix C, operating results fluctuated from a loss of $275,000 in 1963 to an operating profit of $207,000 in 1964. While the carrier has maintained positive net worth for the past three years, its net working capital position deteriorated from a positive figure of $220,000 in 1962 to negative amounts of $784,000 and $830,000 in 1963 and 1964, respectively.

10187

The working capital problem is alleviated to some extent by favorable banking arrangements with the Continental National Bank of Fort Worth. The bank in effect provides the applicant's working capital by permitting it to borrow freely and continuously against U. S. government transportation requests up to a bank loan limit, now set at $800,000. In addition, there has been extensive forgiveness of debt for DC-3 rentals owed by the airline to Mr. Pigman, which totaled $862,000 in the 1955-1963 period.[9]

American Flyers also desires the broadest possible authority and estimates that, as a matter of judgment, passengers and revenue would increase by 30 percent with inclusive tour authority; an additional 10 percent for separate charters; 40 percent with both inclusive tour and split charter authority; and 50 percent if the applicant could conduct pro rata charters with no affinity requirements. Assuming the grant of this authority and the acquisition

[9] At the hearing the applicant asserted that it has some $1½ million in Constellation spare parts acquired in 1962 which are not reflected on its balance sheets.

of two pure jet aircraft, and making allowance for related expenses for additional administrative maintenance, operations, flight, and sales personnel, the applicant asserts that in the first full year of operations it would obtain $15,000,000 from its charter traffic, 75 percent of which would be from the civil charters, at a profit of $500,000.

Capitol Airways, Inc.

From its beginning as a fixed-base operator in 1946, this applicant has steadily grown to its present status as one of the largest of the supplemental air carriers, with two sizeable maintenance and overhaul bases—at the Greater Wilmington Airport, New Castle, Delaware, and Berryfield, Nashville, Tennessee. Capitol is owned and controlled by Jesse F. Stallings, its principal organizer and president, who has retained a staff of competent and experienced managerial and operational personnel. Capitol is now the holder of a certificate authorizing it to provide civil passenger charters across the Atlantic, as well as an interim certificate for its other operations as a supplemental air carrier.[10]

10188

Capitol maintains a large fleet of some 40 transport type aircraft which includes, as owned aircraft, 11 Constellations of various models, four Argosy's, one DC-3, and 15 C-46's. In addition, six L-1049's and two C-46's are leased. The ap-

[10] *Transatlantic Charter Investigation*, Docket 11908 *et al.*, Order E-20530, served March 3, 1964. Its interim certificate was granted by Order E-18871, October 5, 1962. The fixed-base and aircraft sales activities are now performed by a separate corporation, Capitol Air Sales, Inc., which is also substantially owned and controlled by Mr. Stallings.

plicant also owns one DC-8F pure jet, placed in operation in October, 1963; a second DC-8F has been ordered for December 1965, and Capitol plans to order a third for delivery in April 1966.

The applicant's operations have been virtually worldwide in scope and have produced total transport revenues ranging between $13 million and slightly under $19 million annually in the calendar years 1961, 1962, and 1963. While its interstate charter activities have been extensive, 74.6 percent to 82.2 percent of its total transport revenues in the 1961-1963 period were derived from the military for whom it has performed a great diversity of services, including domestic CAM's, those of a LOGAIR contractor, and international MATS operations. For the year ended September 30, 1964, 31.8 percent of Capitol's total transport revenues of $16,772,000 were derived from civilian sources and it had an operating profit of $924,000.

Although not certificated until 1964, the applicant has been a major participant in the transatlantic passenger charter market since 1958 pursuant to Board authorization, and this market provides the bulk of Capitol's non-military revenues. Last summer Capitol experienced an increase of 127 percent in its summer transatlantic traffic over the previous year and expects a similar increase in 1965. Approximately 60 percent of the total volume of the transatlantic revenues was received from the operations with its pure jet and a remainder from use of its other aircraft, and the carrier is experiencing an increasing sales resistance to propeller driven equipment. Capitol's split charter authority has been of a limited usefulness since such charters may not be operated to such IATA countries as the United Kingdom and France.

Although the applicant's financial position has been found to be relatively sound on the recent occasions that the Board has had to consider the matter,[11] there are areas of financial concern. Capitol's problems have been in undercapitalization ($10,000 in capital stock outstanding), together with its cash and working capital position. As shown by Appendix C, while its net worth position has been relatively strong, the problem with working capital has been substantial and sustained, and profits have been modest in comparison with total operating revenues. Thus, in 1964 net worth was $952,000, only slightly less than the figure for 1961; operating profits declined from $378,000 in 1961 to $164,000 in 1963, and then turned upward to $924,000 in the subsequent year. Working capital, however, experienced a precipitous decline from negative figures of $60,000 in 1961 to $3,756,000 in 1964.

10189

Capitol presented a general estimate concerning the impact on its revenues under various assumptions as to the scope of authority that might be granted in this proceeding. Assuming that two DC-8F aircraft had been operated in 1963, Capitol forecasts that its 1963 transport revenues of over $15 million would have been increased by 5 percent with split charter authority; inclusive tour authority would add another $5 million; and with both types of authority its revenues would have totaled $20,651,000.[12]

---

[11] Order E-20530, pages 24-25.

[12] A cease and desist order for violations of an economic nature was entered previously against the carrier. The Board has found, however, that the activities that gave rise to this order should not

(10189)

Conner Air Lines, Inc.

Francis Augustus Conner received a Letter of Registration as a Large Irregular Air Carrier in 1949, and from that year until February 8, 1959, when the last revenue flight was flown, he conducted operations intermittently—originally as a sole proprietorship and later through Conner Air Lines, Inc., a Florida corporation controlled by him. All of Conner's authorizations from the Board were terminated in July 1962 by P. L. 87-528, and neither Mr. Conner nor any of his enterprises now possess any authority to engage in air transportation.[13] Present activities are limited to the purchase, sale, and rental of aircraft and associated equipment.

The applicant here is Conner Air Lines, Inc., a newly organized Delaware corporation, which at present is a corporate shell. Aside from the $1,000 received from Mr. Conner to purchase all of its outstanding capital stock, the ap-

---

have any material adverse effect on Capitol's compliance disposition. Order E-18871, page 5. From 1959 to date various letters of reprimand and letters of correction have been issued to the applicant by the FAA and over $17,000 in civil penalties have been assessed. Presently in dispute are asserted violations of record-keeping requirements allegedly stemming from Capitol's C-46 operations. An initial compromise offered of $5,000 by the FAA was refused, the matter is now in litigation, and the dollar amount presently claimed by way of penalties has escalated to $343,000. According to press reports this $343,000 claim has been settled for $6,500. *Aviation Daily*, Vol. 159, No. 31, June 15, 1965, p. 263.

[13] See Order E-21740, February 1, 1965. Mr. Conner apparently attempted to reactivate operations with C-46's in 1962 but approval of the company's proposed manual was denied by the FAA in May of that year. Conner's inactivity disqualified the carrier from receiving interim operating authority and his request therefore was denied. Orders E-19045, November 28, 1962, and E-20681, April 10, 1964.

plicant has no assets, no full-time employees, and no aircraft. The apparent purpose of utilizing the Delaware corporation is to permit Mr. Conner to preserve a tax loss from the past corporate activities and to allow for easier financing if authority is granted. The Florida corporation

10190

has an accumulated deficit which grew from $166,426 at the end of 1960 to $369,232 as of June 30, 1964, and which consists of amounts owed to Mr. Conner personally.

As far as is shown by the record, applicant would be dependent entirely upon Mr. Conner for the funds necessary to inaugurate operations. He in turn has expressed willingness to guarantee that an amount up to $500,000 would be made available if a permanent certificate is granted. In support of his undertaking, Mr. Conner presented an unverified statement of net worth for himself and his wife as of December 10, 1964, which showed total assets of $856,553.12, total liabilities of $50,939.51, and a net worth of $805,613.61. To a substantial extent the assets consist of used aircraft, many of which are not in operating condition, and a warehouse containing a supply of engines, parts, and related equipment. For the most part, the valuations were not independently arrived at but established by Mr. Conner himself.

Applicant presented several proposals which were predicated on types of operations beyond the scope of this proceeding. Insofar as its charter proposal is concerned, applicant proposes to lease two DC-7B's and L-1049's for passenger service and one DC-4 and one C-46 for cargo operations. For 1965 as a future year, it estimates revenues of $1,822,824 and expenses of $1,446,493.

(10190, 10191)

Holiday Airways, Inc.

The applicant is a newly formed corporation which conducts no air transport operations. The principals are Richard D. Neumann, its president, who owns 700 of the 1,000 shares of stock outstanding, and Joseph H. North, the executive vice president, treasurer and secretary. Messrs. Neumann and North and most of the applicant's other officers have had some aviation experience, particularly with supplemental air carriers or their predecessors.[14]

Holiday did not present a balance sheet or other formal indicia of its present financial condition. However, from the oral testimony it is evident that, as of the date of hearing, the applicant has some $5,000 in cash on hand. Since incorporation in February 1964 some $33,000 has been expended, $13,000 of which was supplied by unsecured two-year notes from individuals and $20,000 by loans from Messrs. Neumann and North. The applicant occupies some

leased space at Midway Airport in Chicago, which would be its main base, but has no other facilities. It presently owns no aircraft and has no salaried employees.

---

[14] Mr. Neumann was president of California Air Charter, Inc., a former supplemental air carrier, when its interim authorization was revoked for knowing and willful violations of the Act, but he was not affiliated with the company when those violations occurred. *California Air Charter-Mercer, Enforcement*, 30 C. A. B. 17 (1959). Mr. North was a pilot for Chicago and Southern before its merger with Delta Air Lines. Since that time he has had financial, accounting, and general business experience unconnected with aviation. Although other officers were employed by various supplemental air carriers found guilty of economic violations of the Act, their employment was not as officers, directors, or in other capacities involving managerial and policymaking responsibilities.

Holiday plans to inaugurate operations promptly as the first step in a three-stage program. The initial operations for the first year would consist of a cargo service for five shippers under long-term contracts between Hawaii, on the one hand, and the Pacific Coast, Northern Europe, and Japan, on the other hand. Applicant would utilize three L-1649AF's, to be purchased from TWA, and would lease additional ground facilities at Lockheed Air Terminal, Burbank, California, at the Oakland International Airport, and at Honolulu. These plans, as well as the full-time employment of Holiday's officers and the commencement of their compensation, are all contingent upon formal execution of the contracts with the shippers, which has not yet been accomplished.[15]

In the applicant's view, these initial operations would constitute private carriage for hire and therefore would not be subject to the Board's economic regulatory jurisdiction. Certification as a supplemental carrier is desired in order to permit expansion in the number of contracts to a full common carriage operation and to provide the additional financial support that could be derived from passenger charters. Holiday has not yet obtained an appropriate operating certificate from the FAA, which would be required for even the "contract" operation.

Holiday's financial plans are also contingent upon formal execution of the contracts, and later, upon issuance of a certificate as the result of this proceeding. As of the beginning

[15] Holiday's intention was to start the "contract" operation on or about March 1 of this year, and at its request the record was held open until February 8, 1965, for the receipt of copies of executed contracts with its proposed shippers. However, no such contracts were submitted for the record.

of operations, and again assuming the existence of signed contracts, applicant states that it would have $509,000 in current assets all represented by cash on hand or in banks, and $460,000 in fixed assets. The $509,000 figure is constructed by adding the $1,000 already paid in for stock, $200,000 to be received in prepaid transportation revenues, $600,000 in debt capital, $150,000 in equity capital, and an additional $18,000 in loans from officers, from which is to be subtracted $460,000 representing the cost for flight and other equipment. Holiday has written stock subscriptions for some $135,000 to be made available when the applicant is ready to inaugurate operations pursuant to the contracts and for an additional $75,000 to $85,000 if and when a certificate is issued. The $600,000 in debt capital, also contingent on the signed contracts, is in the process of nego-

tiation but no commitment has been made as yet. Should all of these things come to pass, the applicant foresees at the end of the first year total revenues of $3,554,000, total expenses of $2,963,338, and a net profit after taxes of $216,197.

In the second year of operation Holiday would for the first time use its certificate authority to supplement its basic "contract" service. According to the applicant, the availability of this additional authority would enable it to increase its total revenues almost fivefold and produce a net profit of $2,362,753. This assumes additions to its aircraft fleet by purchase of three more L-1649AF's (for a total of six such aircraft), three DC-3's, two Martin 202's, and three DC-7BF's; and some additional equipment, such as DC-4's might be leased-purchased. With no additional

aircraft in the third year of operation, the applicant asserts that it could increase its revenues to over $18 million and its net profit to $2.7 million.

Holiday generally supports expansion of supplemental air carrier authority to include split charters and inclusive tours. In the provision of supplemental air transportation, the applicant asserts that at least initially it would concentrate on providing service to and from the 12-state area surrounding Illinois.

Johnson Flying Service, Inc.

Johnson Flying Service was founded by Robert R. Johnson, the owner of 76 percent of its outstanding stock, who has been engaged in aviation activities continuously since 1924 and has been the president and manager of the applicant since its inception. The company has a sizeable maintenance and overhaul facility at Missoula, Montana, its principal base of operations, and also maintains a smaller facility at McCall, Idaho. There is a high degree of longevity of service among Johnson's employees, and its management is skilled and experienced. The applicant has held the various types of Board authorizations previously issued to supplemental air carriers and their predecessors, and it presently holds an interim certificate authorizing it to engage in supplemental air transportation.[16]

Unlike virtually all of the other operating supplemental air carriers, Johnson conducts no operations for the military. Rather, it is a specialist in mountain flying whose operations are geared particularly to the states of the Northwest surrounding Missoula. Johnson's services under

[16] Order E-18874, October 5, 1962.

contract with U. S. Forest Service generally have provided the major source of its income.[17] These services demand a

high degree of skill since they involve such activities as timber spraying, transporting smokejumpers and associated activities in conjunction with the forest firefighting program, cargo drops, para-rescue flights, etc.

The applicant also conducts conventional planeload charter operations in which there has been a substantial amount of repeat business by customers of long standing.[18] The passengers carried and revenues derived from these charter operations in the 1961-1963 period are indicated below:

	Pax.	Rev.
1961	1355	$35,188
1962	2087	60,930
1963	5220	60,678

Revenues from cargo charters other than for the U. S. Forest Service increased from about $7,600 in 1961 to $16,653 in 1963. All of Johnson's operations have been in interstate air transportation (including Alaska), with an

[17] The precise dollar amount of this revenue has fluctuated over the years but has always been substantial. In 1963, for example, it accounted for $741,771 of Johnson's total transport revenues of some $902,000.

[18] These charterers, until recently at least, have been exclusively of the single entity variety, and Johnson has some charters already booked for performance as far in the future as 1967. Applicant's principal customers include Montana State University at Missoula; Montana State College at Bozeman, Montana; Idaho State University at Moscow, Idaho; and the Atomic Energy Commission at Idaho Falls, Idaho.

occasional flight transiting Canada. Throughout the years, applicant's record of compliance with regulatory requirements has been excellent.[19]

Applicant's fleet is composed of some 40 airplanes and six helicopters, all owned by the company. One DC-4 and two DC-3's are used in Johnson's charter operations and the bulk of the remaining airplanes are small aircraft. Included are some 16 different types of aircraft and 12 kinds of engines which are overhauled and maintained at the applicant's base in Missoula.

Johnson, despite the modest size of its operations, belongs among the more satisfactory grouping of supplementals from a financial standpoint. It has remained consistently strong, with much of its earnings plowed back into the company for the acquisition of additional aircraft. As

10194

shown in Appendix C, despite some fluctuation in its operating profit position, Johnson has maintained a net worth in the range of $450,000 to $500,000, and net working capital of at least about $150,000, in the entire 1961-1964 period.

Any expansion of the applicant's authority would require additional aircraft and personnel of unspecified types and amounts. The applicant believes that if it had authority to provide inclusive tours and split charters, its 1963 revenue (other than from the Forest Service) would have increased by about one-third.

---

[19] The applicant has not been the subject of an economic enforcement proceeding since 1947. From 1959 to the present there has been only one instance of an alleged safety violation and this was disposed of by issuance of a letter of reprimand.

(10194)

Modern Air Transport, Inc.

Modern has been active in the nonscheduled or supplemental field since 1947 and is one of the smaller and more conservative of the supplemental air carriers now operating under an interim authorization.[20] Since 1953 the applicant has been owned and controlled entirely by John P. Becker, its president and general manager, who has been associated with aviation activities for over 25 years, and who has retained for the company managerial employees experienced in airline operations. Its base is at Trenton, New Jersey, where, except for engines and other selected items, Modern performs its own maintenance and overhaul. The carrier also engages in some limited activities of a fixed-base nature, such as the sale of aviation fuel and the performance of maintenance for itinerant aircraft.[21]

During recent years the applicant has been engaged almost exclusively in interstate operations, with heavy dependence upon domestic military movements. In 1961, before the demise of individually ticketed and waybilled operations by the supplementals, this source provided the major portion of its income. Starting in 1962, however, and continuing through the year ended September 30, 1964, the military CAM's or CAMF's accounted for better than 90 percent of Modern's revenue. Civil charters consistently

---

[20] Modern's interim certificate was granted by Order E-18870, October 5, 1962.

[21] Applicant's compliance history shows one cease and desist order outstanding concerning section 408 violations related to Mr. Becker's interlocking relationships. Further, there were four instances of alleged safety violations in 1963 and 1964, which were disposed of on the basis of a civil penalty of $250 and letters of reprimand or correction.

have played a relatively minor role, as shown by the table below:

	1961	1962	1963
Revenue CAMs	$ 22,008.80	$ 899,344.50	$746,013.09
Common Carriage	253,511.84	40,836.50	9,584.20
Excess Baggage	502.48	46.20	15.00
Civil Charters	69,414.70	39,766.87	44,535.56
CAs	7,487.20	14,104.20	——
Incidental revenue	6,305.00	11,392.79	——
TOTAL[22]	$359,230.02	$1,005,491.06	$800,147.85

As of June 30, 1964, the applicant's transport aircraft consisted of one L-749 and two L-049's. However, as of the date of hearing, the Constellations had been sold, and the carrier has recently acquired three DC-7C's. It has also received interim certificate authority to operate transatlantic passenger charters during the 1965 season.[23]

Modern's financial condition has been very marginal, and the Board was presented with a close question as to the carrier's financial fitness even at the time its interim certificate was issued in 1962.[24] As shown by Appendix C, Modern has had a negative net worth for the past two years and is the only operating supplemental currently in that situation. While the carrier's income has risen steadily, it has been more than offset by the increase in expenses. Modern had operating losses of $71,000 and $67,000 in 1963

[22] The total figures for 1961 and 1962 comprise total operating revenue, while the total for 1963 comprises total transport revenue.

[23] Order E-22357, June 24, 1965.

[24] Order E-18870, page 3.

and 1964, respectively, and has experienced a negative net working capital position for the past four years—$197,000 in 1961, $22,000 in 1962, $74,000 in 1963, and $99,000 in 1964.

According to the carrier, its financial difficulties in 1963 and 1964 were attributable largely to faulty engine overhaul by a contractor, which involved substantial extra costs. A saving grace for the carrier has been the fact that most of its needed funds have been provided by Mr. Becker on unusually favorable terms. Also, since much of the long term debt is owed to Mr. Becker, it would be subject to forgiveness if that course were deemed necessary.

10196

Modern's plans call for the eventual acquisition or lease of three turbo-prop Electras and retention of as many of the DC-7C's as its needs may dictate. Assuming operation of the turbo-props, the carrier's judgment is that it would have had approximately 50 percent more revenues in 1963 with split charter (35 percent) and inclusive tour (15 percent) authority. On the basis indicated, Modern estimates $5,350,000 in revenues and $4,800,000 of expenses, for a net income of $550,000.

Overseas National Airways, Inc.

ONA is the holder of an interim certificate and, in addition, was selected by the Board in the *Transatlantic Charter Investigation*, Docket 11908 *et al.*, as one of three carriers to receive certificate authority to provide civil passenger charters across the Atlantic. However, in view of ONA's filing of a petition in bankruptcy and its suspension of operations after the adoption of the Board's decision in the *Charter Investigation*, the President returned the decision

to the Board for further evaluation insofar as the award to ONA was concerned. The proceeding was reopened and further hearings held. On October 8, 1964, Examiner Wiser issued a recommended decision finding that ONA should not be certificated since it was no longer financially fit to conduct transatlantic charter operations.[25] The Board has since reopened the record in the *Charter Investigation* in order to receive up-to-date information on the current fitness and comparative qualifications of all supplemental air carrier applicants in that proceeding (including ONA) for selection as transatlantic passenger charter carriers.[26]

ONA was organized in 1950 and during the early years of its operations was one of the dominant carriers in the supplemental air carrier field, particularly in the 1956-1960 period. In 1960, for example, ONA had some $28,000,000 of transport revenues, virtually all from military traffic, which represented about 46 percent of the total of such revenues for all supplemental carriers combined during that year.

10197

Subsequently, however, ONA's situation steadily worsened as the carrier experienced persistent losses.[27] The car-

---

[25] *Charter Investigation*, Orders E-20530 and 20531, served March 3, 1964; E-20776, April 30, 1964; and E-21567, December 8, 1964. The certificates issued to the other two transatlantic charter carriers selected, Capitol and Saturn, were unaffected by the President's action and are currently in effect. ONA's interim certificate was issued by Order E-18867, October 5, 1962.

[26] Order E-21966, March 30, 1965.

[27] Data filed in connection with the bankruptcy action showed net losses in the following amounts in fiscal years 1961 through 1963, respectively: $218,490, $173,984, and $278,642 ($211,532 in July-October 1963). According to the carrier's reports filed with the Board the net loss was $982,000 in calendar year 1963.

rier's last revenue flight was performed on October 4, 1963, and on October 28 of the same year the petition in bankruptcy was filed under Chapter XI of the Bankruptcy Act. As of the date of this petition, ONA showed total assets of $747,342 and total liabilities of $2,088,535.

As the debtor in possession, ONA has authority to conduct operations during the pendency of the bankruptcy action but has not undertaken to do so. The applicant now has only two full-time salaried employees; it owns no aircraft and has none under lease. Apart from relatively small amounts in cash and accounts receivable, its principal assets consist of spare parts inventory at John F. Kennedy International Airport in New York, where it has office and warehouse space, and at Oakland, California. Although ONA entered into a plan of arrangement with its principal creditors on April 14, 1964, the plan has not yet been presented to the Court for confirmation and probably will not be presented until the Board has acted finally on ONA's certificate application in the *Charter Investigation*. According to the carrier's witnesses, confirmation of such a plan is routine and usually accomplished within 45 to 60 days after a request is made.

Under these circumstances, it was necessary for the applicant to present its case here on two alternative assumptions: first, that it will not receive a transatlantic charter certificate, and second, that such a certificate ultimately will be issued to it. Under the first assumption ONA would be effectively owned and controlled by Bernard J. Herkimer. The carrier would hope to lease two DC-7-C/F's and engage in inclusive tour and split charters, as well as the conventional planeload charters. At the time the plan of arrangement was approved, some $300,000 to

$350,000 in additional financing would be necessary to pay priority claims and otherwise permit inauguration of operations. No source for such funds is apparent from the record.

Should ONA be certificated to provide transatlantic civil passenger charters Messrs. G. F. Steedman Hinckley and Louis Marx, Jr., would become co-owners in equal shares of ONA stock and each is committed by outstanding escrow

10198

agreements to furnish $375,000 to the company.[28] Mr. Herkimer, who would receive some $50,000 over a period of time pursuant to an agreement with Mr. Hinckley, would no longer have any interest in the carrier. Upon judicial approval of the plan of arrangement, presumably ONA would reactivate operations with leased DC-7-CF's on the basis previously indicated.[29]

The applicant presented two different balance sheets as of November 30, 1964, also predicated on alternative assumptions. Based on the present circumstances they show total assets of $480,657, current and long term liabilities of $1,254,729 and a negative surplus at January 1, 1964, of $1,060,613. If, however, effect is given to the

[28] The documents in the record show that each would acquire 50 percent stock interest. However, Mr. Hinckley testified that a relatively small amount of the stock might be vested in Mr. J. William Bailey, then Executive Vice President of the National Air Carriers Association who, in effect, would act as a swingman between the equal interests of the other owners.

[29] The traffic and profit and loss estimates presented by ONA are predicated on its exhibits in the *Charter Investigation*, which contemplate interstate and transatlantic charter operations only. Adjusted to reflect, among other things, the addition of inclusive tour and split charter authority ONA forecasts net revenue of $283,755 for 1965.

proposed creditor's plan of arrangement, the balance sheet shows current assets of $169,082 and current liabilities of $136,710. In addition, there are additional liabilities of $99,870 due within 13 to 30 months and a negative item for unappropriated retained earnings of $885,744.

ONA's past operating record does not reflect adversely on its compliance disposition. The Board did enter a cease and desist order against the carrier with respect to unauthorized operations in 1958 and 1959, which was sustained upon judicial review.[30] There were four instances of alleged safety violations in 1960 and 1961 which were compromised on the basis of civil penalties totaling $2,300.

Purdue Aeronautics Corp.

Applicant is a nonprofit corporation affiliated with Purdue University whose mission is aeronautical education and research. Its primary curriculum involves programs concerned with aviation maintenance, aviation electronics, and the training of aviation technicians and professional pilots.

10199

As a supplement to its educational activities, since 1953 Purdue has held authority of one form or another from the Board authorizing nonscheduled or irregular operations with large aircraft, and it currently holds interim authority pursuant to Public Law 87-528.[31] Its management and operations employees are well qualified and experienced. Purdue's operating base is located at Purdue Air-

[30] *Overseas National Airways, Inc.* v. *C. A. B.*, 307 F. 2d 634 (1962).

[31] Order E-18876, October 5, 1962.

port, Lafayette, Indiana, where the applicant performs its own maintenance and overhaul.

Historically, Purdue's operations have been restricted to providing interstate air transportation services, predominantly single entity passenger charters, with some transborder operations into Canada pursuant to individual authorizations from the Board. Although commercial business has been and remains the mainstay of Purdue's air transport activities, starting in 1962 the applicant has undertaken increased participation in military CAM movements. In 1963 Purdue's charter income was derived 80 percent from commercial passengers ($438,697), 4 percent from commercial cargo ($16,889) and 16 percent from CAM flights ($83,690). The applicant has one DC-6, which was recently acquired. It also operates four DC-3's, one of which is convertible to cargo configuration (C-47). Applicant's record of compliance with applicable economic and safety regulations has been excellent.[32]

Being a nonprofit corporation, Purdue usually records little or no profit or loss. However, its financial condition is relatively sound. Its revenue has grown steadily from $381,000 in 1956 to over $1,000,000 in 1963, while, for the same period, its long term debt has been progressively reduced despite a gradual increase in the value of its total assets. The applicant's ratio of current assets to current liabilities has been generally favorable, and at the end of 1963 its current assets exceeded current liabilities by some $76,000.

---

[32] There were four instances of alleged safety violations in 1961 and 1962, which were settled by issuance of letters of reprimand or acceptance of civil penalties totaling $300. No economic violations are indicated.

(10199, 10200)

The applicant desires continued permission to serve on a permanent basis the geographical areas in which it has historically operated—interstate and to and from Canada. It supports inclusive tour authority for supplemental carriers but has no interest in performing split charters. Purdue's future year forecast generally reflects its 1963 experience with additional revenues of $235,880 from the operation of its DC-6, almost one-half of which would be derived from CAM traffic.

10200

Saturn Airways, Inc.

The applicant originated as All American Airways, Inc., a large irregular carrier, in 1948 and assumed its present name in 1960. Saturn is the holder of an interim certificate as a supplemental air carrier and one of two such carriers which possesses certificate authority to provide transatlantic civil passenger charters.[33] Robert G. Goodman, who has an extensive background in aviation matters, has been president of the applicant since 1953 and its controlling stockholder since 1959. As its operating record demonstrates, Saturn's management is well qualified and experienced.

At the present time Saturn operates eight DC-7C's in passenger configuration, two of which are owned and the balance leased. Overhaul and maintenance is performed

[33] Saturn's interim certificate was granted by Order E-18868, October 5, 1962, and its transatlantic passenger charter authority in the *Transatlantic Charter Investigation*, Orders E-20530 and E-20531, served March 3, 1964. An application by the carrier to amend its interim certificate so as to provide it with authority to conduct passenger charters across the Pacific and to Latin America and the Caribbean was denied by Order E-21748, February 2, 1965.

mainly by All American Maintenance, Inc., in San Antonio, where most of Saturn's crews are also quartered. Executive offices are located in Miami, Florida, operational bases in Los Angeles, New York City, and Berlin, Germany, and sales offices in New York City, Chicago, Los Angeles, Miami, London, England, and Berlin. Over the years there has been no significant blemish on the safety of the carrier's operations.[34]

Between 1953 and 1960 the applicant was predominately a domestic military charter operator. Starting in 1960, however, its civil operations became more diversified and have grown substantially to the point where Saturn today is perhaps the most versatile civil charter operator. Notwithstanding this expansion, Saturn's business shows strong seasonality, dropping off sharply in the winter months particularly in transatlantic passenger charters (inaugurated in 1961) and in CAM movements. The diversified nature of recent operations is indicated in the table below for 1963:

Charters	Revenue	Percent
Domestic Civil	$ 258,395	11.1
Domestic Military (CAM)	1,157,960	50.1
Transatlantic Charters	758,727	32.8
Hawaii-Pacific	87,357	3.8
Caribbean and Bermuda	49,719	2.2
	$2,312,158	100.0%

10201

Saturn's estimate on the record, based on charters flown and contracts signed, was that its transport revenue would

[34] In the 1961-1963 period there were three instances of relatively minor infractions of safety regulations which were settled on the basis of letters of reprimand or correction.

(10201)

more than double to $5,045,471 in 1964.[35] The principal items of increase in revenues under this forecast would be domestic civil charters to $677,571, domestic military to $1,489,804, transatlantic charters to $1,650,000, Hawaii-Pacific to $539,000, and Caribbean and Bermuda to $168,096. In addition, Saturn conducted intra-Europe inclusive tours with two DC-7C's based at West Berlin which accounted for $700,000 in revenues during seven months of 1964.

Saturn experienced a marked increase in activity when certificated to perform transatlantic civil passenger charters in 1964, and the data of record is not sufficiently current to allow for a definitive judgment concerning the operating results. However, based on the past Saturn's financial condition must be classed as no better than marginal. It has shown a modest increase in net worth but operating losses and a chronic negative net working capital position.[36] Thus net worth increased from a negative $35,000 in 1961 to a positive $263,000 in 1964 while operating profits of $26,000 annually in 1961 and 1962 were transformed to operating losses of $15,000 and $51,000 for 1963 and 1964, respectively.[37]

The applicant generally supports an award of both split charter and inclusive tour authority to the supplemental air carriers. Given the right to charter aircraft to ticket

---

[35] As shown by Appendix C, they did reach a total of $4,696,000 for the year ended September 30, 1964.

[36] Appendix C.

[37] Recently the Board approved an arrangement under which, AAXICO would acquire three of Saturn's leased DC-7C's and lease them back to Saturn under favorable terms and conditions. This arrangement should have the effect of alleviating Saturn's financial problems by deferring payment of substantial current indebtedness. Order E-21992, April 5, 1965.

agents for the operation of inclusive tours, Saturn would concentrate, at least initially, on what it considers to be the major resort markets, viz., Miami, Las Vegas, Los Angeles, Berlin, Mexico City, Hawaii, Puerto Rico, and South America (Rio de Janeiro, Lima, and Buenos Aires). It recognizes the need for jets to compete effectively, particularly in the long haul markets such as the transatlantic, and is negotiating for the purchase of such aircraft.

10202

The applicant presented its plans and proposals on the basis of two alternatives: first, that the company would remain a separate entity as at present; and secondly, that the Board will approve the pending merger agreement between AAXICO and Saturn in Docket 15675.[38] Under the first hypothesis and assuming that it had a five-year permanent certificate in 1963, Saturn estimates that its civil charter revenues would have increased in that year by 7 percent with split charter authority, 39 percent if it could operate inclusive tours, or 46 percent for both. With 1965 as a forecast year, the applicant projects $6,250,000 in revenues, $5,831,000 in expenses, for a net income before taxes of $419,000.

On the second alternative of a merged Saturn-AAXICO during 1965, the estimate is that transport revenues would total $17,637,777, of which $9,190,000 would be revenue from military operations attributable to AAXICO's LOGAIR and Saturn's CAM contracts. The balance would be derived from $3.5 million for transatlantic charters (not including inclusive tours), $700,000 from the Berlin, intra-Europe inclusive tour operation, $1,500,000 in civil cargo charters,

[38] See the discussion of AAXICO, *supra*, pages 1-2.

(10202, 10203)

and $2,745,358 from civil passenger charters other than transatlantic. As far as is shown by this record, the merger would provide a substantial cure for Saturn's past financial difficulties.

Southern Air Transport, Inc.

The applicant was organized in 1947 by Frederick C. Moor, its present Chairman of the Board and Treasurer, and has provided uninterrupted service pursuant to various Board authorizations since 1949.[39] Stanley G. Williams took over active direction of the carrier in July 1962 and continues to serve as its president. Maintenance is performed by the applicant at its home base at the International Airport, Miami, Florida, except for engine overhaul and limited contractual arrangements which are necessitated by Southern's operations for the military in the Far East. Southern has a stable force of experienced management and operations personnel, and the carrier's operations have never posed a compliance problem.[40]

10203

Historically, Southern's civil operations have consisted principally of the transportation of cargo, particularly between Miami and points in the Caribbean and Latin America. Most of this service was provided on an individually waybilled basis, for which the carrier's authority has been

[39] The carrier's interim certificate pursuant to Public Law 87-528 was issued by Order E-18839, September 28, 1962.

[40] No formal economic enforcement action has been instituted against the carrier during its entire history. Between October 1960 and May 1964 there were three instances of alleged violations of safety regulations which were settled by civil penalties totaling $2,250.

terminated by Public Law 87-528. Since 1960 international operations for MATS have provided the major source of the applicant's revenues. Southern's operations pursuant to its MATS contract are centered in the Far East and involve principally the transportation of persons and property between Korea, Japan, Okinawa, Taiwan, the Philippines, Viet Nam, and Thailand. The dominance of the military revenues is illustrated by the tabulation below:

	Transport Revenues (000)			
	Total	% Civil	% Military	% Other
1961	$3,641	10.5	83.4	6.1
1962	5,526	5.9	87.3	6.8
1963	5,814	9.2	87.6	3.1
1964*	5,509	18.9	77.7	3.0

The applicant has an owned aircraft fleet of two DC-6A/B's, one DC-4 in all-cargo configuration, three C-46F's, and one C-45H. In addition, it leases two DC-6 aircraft. Generally speaking, the C-46's and DC-4 have been utilized for the cargo service to the Caribbean while the DC-6's perform the MATS contract operations. Southern has no present plans for the acquisition of jet aircraft.

As illustrated by the data in Appendix C, Southern's financial condition has been consistently sound, with steady growth in profits and net worth, and with a favorable current ratio. Operating profits hovered between $200,000 and $300,000 annually throughout the 1961-1964 period and net worth rose from $128,000 in 1961 to $417,000 in 1964. Southern has not been plagued with the negative net work-

* 1961-1963 are calendar year figures; 1964, for the year ended September 30.

ing capital problem common to so many supplementals, for it had positive net working capital of $490,000 in 1963 and $524,000 in 1964. As of September 30, 1964, Southern had current assets of $1,276,106 and current liabilities of $748,510. Its cash balance exceeded $283,000 as of the latter date and the carrier is meeting its obligations as they fall due.

With worldwide authority including split charters, inclusive tours, and the ability to charter to airfreight forwarders, the applicant estimates a substantial increase in its civil traffic. For 1965 it contemplates no additional aircraft but some modest increase in expenses for sales, advertising, and additional ground personnel. Under its

projection for 1965 as a future year, dependence on military revenues would be reduced from the 87.6 percent of 1963 to roughly 66 percent. In total, the applicant foresees revenues of $6,394,000, operating expenses of $5,727,000, for a net income of $351,000.

Standard Airways, Inc.

The dominant figure in Standard Airways is Shields B. Craft, its president, general manager, and controlling stockholder for the past 18 years who has broad and extensive experience in supplemental air carrier operations. Standard originated in 1945 as a partnership doing business under the name of Standard Air Cargo, and officially adopted its present name upon incorporation in 1960. The applicant received an interim certificate authorizing it to engage in supplemental air transportation in 1962

which, as later appears, is presently suspended pursuant to Board order.[41]

In the last few years Standard has concentrated primarily on individually ticketed passenger service, and, more recently, on military CAM movements. To illustrate, in 1961 individually ticketed operations accounted for some 90 percent of the carrier's transport revenues; however, beginning in 1962 there was a swing to military operations. The latter represented 42.8 percent of Standard's revenues in 1963, while individually ticketed services were drastically curtailed during the phase-out for such operations required by Public Law 87-528. Civil passenger revenues in the 1961-1963 period were derived predominantly from package vacation tours to Hawaii and Las Vegas, which were sold on either an individually ticketed or pro rata charter basis.[42]

The applicant's financial difficulties became acute in mid-1963 when Standard was suspended by MATS from participation in CAM movements for 14 days following an aircraft accident involving the carrier which occurred in May of that year. After it was unsuccessful in carrying out a creditor's plan of arrangement, Standard suspended

---

[41] The interim certificate was granted by Order E-18883, October 5, 1962, and suspended by Order E-20468, February 12, 1964.

[42] Standard's percentage participation in the various categories of business is indicated below:

	Transport Revenues (000)			
	Total	% Civil	% Military	% Other
1961	$1,651	6.5	3.1	90.4
1962	2,687	7.9	33.1	59.0
1963	2,983	37.1	42.8	20.1

all operations on January 31, 1964. On the same day the Administrator, FAA, suspended the carrier's air carrier operating certificate because of the uncertainties of its financial condition, and thereafter, on February 4, 1964, Standard filed a petition in bankruptcy under Chapter XI of the Chandler Act. These events were followed by the Board's order of February 12, 1964, suspending Standard's interim certificate on the ground that the carrier was not fit, willing, and able properly to perform the transportation authorized thereby. So far as appears from the record, Standard has acquiesced in the suspension and has no intention of seeking authority to reinstitute operations until final decision on its application in this case.

As of the time of the filing of the bankruptcy petition, Standard listed total assets of $152,483 and total liabilities of $499,955. A debtor's plan of arrangement was disapproved by the Court and the carrier adjudicated bankrupt on April 27, 1964. Subsequently, on September 30, 1964, the applicant received its discharge in bankruptcy. It would appear that the assets of the bankrupt's estate are more than sufficient to satisfy taxes and other exempt priority creditors, so that there will be no surviving claims or residual liabilities. For the present, applicant has no aircraft, owned or leased, no ground equipment, and no paid employees.

Applicant's future financing is dependent on arrangements, made or contemplated, with a Mr. S. H. Smith, who was long associated with surface transportation but who has no aviation experience. On June 15, 1964, Messrs. Craft and Smith entered into a written option agreement

under which Smith agreed to pay $20,000 for 75 percent of Standard's outstanding stock if (1) Standard receives an unqualified discharge in bankruptcy, (2) Standard's interim certificate, records, and files are released, and (3) the suspension of the certificate is removed and the change of management approved by the Board.[43] According to Mr. Craft, there is also an oral side agreement whereunder Mr. Smith will furnish $100,000 in capital for the company, which is available when needed.

Standard's future plans and proposals are flexible and dependent to some extent on the season of the year in which authority might be received. Generally stated, these plans are in two phases. In the initial phase, with the $100,000 in capital and no liabilities, applicant asserts that

it would be able to lease one DC-3 and one L-049 from Las Vegas-Hacienda Hotel Corporation under unusually favorable conditions that would require the lessor to absorb much of the expense involved in maintenance, ground equipment, etc. Supervisory employees would be paid minimal amounts for their administrative and managerial duties, and the officers—including Mr. Smith who would serve as executive vice president—agreed to forego any salary or other compensation until the carrier returns a profit. Applicant's efforts would be concentrated to a large extent, as heretofore, on promoting and providing package passenger tours to Hawaii and Las Vegas. After this initial phase, and depending on developments, the aircraft

[43] Mr. Craft testified that he and Mr. Smith have agreed that these conditions precedent have been substantially met, although there is no written evidence of record embodying such an understanding.

fleet would be expanded to include another DC-3 and L-049, larger piston equipment, and, hopefully, jet aircraft within two years. The forecast submitted by the applicant shows annual transport revenues of some $438,000 and a monthly profit of $8,800 before taxes and management expenses.[44]

Stewart Air Service

The applicant is Edgar A. Stewart, an individual proprietorship doing business as Stewart Air Service. Mr. Stewart is also a general partner with his son in the operation of Chico Air Service, a fixed-base air taxi type operation located at the Municipal Airport, Chico, California. The fixed-base operation is 100 percent financed by Mr. Stewart, and he would sever all interest therein should he receive a permanent certificate in this proceeding.

From 1948 to January 1962 Mr. Stewart was engaged in activities of a large irregular or supplemental air carrier under appropriate Board authorizations. His operations, conducted out of Hawthorne, California, involved primarily, but not exclusively, the provision of specialized short-haul charter services within the State of California, such as racetrack charters, transporting dance bands, vacationers, hunting and fishing parties, etc. As of the time of cessation of operations, Stewart's transport type aircraft consisted of four DC-3's and one DC-4 owned and operated by him, and in addition, he had one DC-4 under lease.

---

[44] At some point Standard intends to employ Theodore J. Bodwell as its operations manager. This is the same Mr. Bodwell who had active direction and control of Paramount Airlines, Inc., which was found by the Board to have knowingly and willfully participated in the unlawful operations of the Hermann combine. Orders E-20263 and E-20264, October 23, 1963.

(10206, 10207)

On January 5, 1962, Stewart was grounded by an emergency order of the Administrator, FAA, revoking his air carrier operating certificate. The order recited an extensive list of alleged safety violations, including the repeated falsification of Stewart's training, operations, and maintenance records, which were said to have occurred in the period between April 15, 1960, and January 4, 1962. On the basis of these purported violations, the Administrator

10207

concluded that Stewart was no longer qualified to conduct a safe operation.[45] Upon appeal, and after extensive public hearing at which Stewart was present and represented by counsel, Board Examiner Caldwell issued an oral decision on the record on February 3, 1962, affirming the Administrator's order of revocation.[46] Since Stewart did not perfect a timely appeal to the Board, the Examiner's decision became final on February 7, 1962, and remains in effect.

Although Stewart has conducted no transport operations since the revocation, he has maintained ownership of three DC-3's and one DC-4 in operative or near-operative con-

[45] The portion of the emergency order containing the Administrator's ultimate findings reads as follows: "By reason of the foregoing, you [Stewart] have demonstrated such a lack of that degree of judgment, integrity, care and responsibility required of the holder of an air carrier operating certificate that the Administrator can no longer find that you are properly and adequately equipped and able to conduct a safe air transportation operation in accordance with the Federal Aviation Act and the Civil Air Regulations, nor are you entitled to the faith and confidence reposed by the Administrator in the holder of an Air Carrier Operating Certificate."

[46] *Halaby, Administrator, FAA*, v. *Edgar A. Stewart*, Docket SE-268.

dition. He places a value of $250,000 on this aircraft fleet, together with some related equipment such as shop tools, spare parts, ground handling gear, etc. If granted a certificate, Mr. Stewart, as previously, would retain control, direction and ownership of the applicant. He estimates that $25,000 would be needed immediately to resume operations which he believes could be obtained on a personal loan basis, with an additional $100,000 available as needed from loans against the security of the flight equipment. The individual proprietorship at present has no liabilities.

Stewart's interest is in obtaining authority to conduct relatively short haul charter operations in interstate air transportation; he has no desire to provide service to foreign points, in long haul domestic markets, to or from Hawaii, or for the military except under long term contracts. The applicant believes that inclusive tour authority would increase its transport revenues by some 15 to 25 percent and estimates for 1965 as a future year gross revenues of $1.5 million and a profit of 2½ percent, assuming some operations of DC-4 or larger piston aircraft.

Trans International Airlines, Inc.

The applicant, formerly Los Angeles Air Service, was organized in 1946 by Mr. Kirk Kerkorian, its controlling stockholder, and since beginning operations with large aircraft it has continuously held appropriate Board authori-

zations to engage in air transportation. TIA's present interim operating certificate permits the conventional types of supplemental operations. In addition, it has been recently amended to permit the carrier to provide (1) trans-

pacific civil passenger charters subject to certain conditions, and (2) transatlantic civil passenger charters for the 1965 season.[47] Under the leadership of Mr. Kerkorian and Mr. Glenn A. Cramer, TIA has an experienced and well qualified management.

In October 1962 all of the carrier's outstanding stock was sold to the Studebaker Corporation. Subsequent efforts by Mr. Kerkorian to reacquire controlling interest in TIA culminated in the formation of Glenkirk, Inc., in February 1964, which, on September 8, 1964, purchased Studebaker's stock of the carrier. As of the latter date, Mr. Cramer succeeded Mr. Kerkorian as TIA's president and Mr. Kerkorian became Chairman of TIA's Board of Directors. Mr. Kerkorian owns 4,318 shares and Mr. Cramer 508 shares of the 5,146 shares of the outstanding stock of Glenkirk, Inc.

The applicant has executive offices at Las Vegas and its principal base for personnel and maintenance is at Oakland, California. All of its maintenance is contracted and performed primarily at Oakland. Because of the far-flung nature of its current operations TIA also maintains some personnel at other locations such as Chicago, Honolulu and Manila. The carrier's operations have not involved any presently significant deviations from safety requirements.[48]

---

[47] See Orders E-18869, October 5, 1962, and E-21574, December 9, 1964; Order E-22045, April 16, 1965. The transpacific civil passenger charter authority does not permit split charters and is subject to, among other things, individual approval by the Board of each charter and to the general requirements of Part 295 of the Board's Economic Regulations.

[48] In 1962 and 1963 there were five instances of alleged safety violations. Two were settled for civil penalties totaling $750, two were noted for the record, and one letter of reprimand was issued.

(10208, 10209)

Between 1948 and 1956 the applicant was principally a domestic passenger carrier in the business of transporting individually ticketed passengers. Although thereafter TIA continued to perform civil operations, particularly individually ticketed passenger tours between California and Hawaii and transatlantic charters, the essential nature of its operations changed to that of a military contract operator, as shown below:[49]

10209

	Transport Revenues (000)*			
	Total	% Civil	% Military	% Other
1961	$ 5,682	3.5	69.7	26.8
1962	10,044	0.5	99.3	0.2
1963	10,883	3.0	97.0	—
1964	12,974	16.1	83.9	—

The military operations have been largely in the Pacific, consisting mainly of mixed passenger and cargo flights serving the Mid-Pacific islands, with Honolulu as a base, pursuant to the MATS Inter-Island Contract (1963 revenues—$1,360,289) and the MATS Pacific passenger contract operated with DC-8 and Constellation equipment (1963 revenues—$9,156,604).

During 1964 the applicant made a concerted effort to increase its domestic civil passenger charters, with notable

[49] Prior to the termination of its individually ticketed authority, California-Hawaii revenues from this source were substantial, totaling $878,150 in 1960 and $1,484,097 in 1961. TIA was particularly active in transatlantic passenger charters during 1959 and 1960 but thereafter its participation declined. Thus, this source provided $208,407 in revenues in 1963 as contrasted to $1,329,539 in 1959.

* Calendar years 1961-1963; year ended September 30, 1964.

success. Only 18 such flights, producing $228,406 in revenues, were operated during 1963. In contrast, with heavy concentration on the resort markets of Miami, Las Vegas, and Honolulu, for the period January 1, 1964, through December 15, 1964, TIA flew 343 domestic charter flights for total revenues of $2,191,975.[50]

TIA was the first of the supplementals to purchase and operate turbo-jet aircraft. Its first fan jet, a DC-8 in passenger configuration, was placed in operation in July 1962; its second, a DC-8F, began service on May 1, 1963; and another DC-8F was ordered for delivery in May 1965. One of the jets is committed to perform passenger flights over the routes of Lufthansa, the West German carrier, between April and October 1965. The applicant also owns and operates four L-1049 Constellations.

10210

TIA's net worth has been among the highest in the industry and the carrier has recently experienced substan-

[50] Prior to 1963 the applicant had not been the subject of any formal economic enforcement action. The intensification of domestic charter activity in 1963 and 1964 led to several formal complaints against TIA by those competitively affected in the East Coast-Florida market, primarily on the ground that the applicant was offering and performing air transportation services in the form of "charters" which were not authorized by its interim operating certificate. (Dockets 14910, 14961, and 15005). On July 1, 1964, the Director, Bureau of Enforcement, declined to institute enforcement proceedings on any of these complaints, and the Board affirmed his decision in Docket 15005 by Order E-21440, October 23, 1964. A similar complaint was filed by Pan American World Airways against TIA and Pan America Tours, Inc., in June 1964, and is now pending (Docket 15358). In addition, there are pending court actions brought by Northeast against TIA, as well as World and Capitol, which involve requests for injunctive relief and damages on account of alleged unlawful "charter" operations.

tial operating profits. Its weaknesses have been in an insufficient proportion of civil revenues, where there has been substantial recent improvement, and in a distinctly unfavorable net working capital position. Thus net worth has climbed from a negative $201,000 in 1961 to a positive $3,961,000 in 1964 and operating profits from $79,000 to $2,884,000 in the same years. Net working capital, however, has taken a sharp skid from a positive $279,000 in 1961 to a negative $4,463,000 in 1964.[51]

TIA believes that it and other supplemental carriers with pure jets being operated or on order should be granted worldwide authority, including split charters and inclusive tours. Assuming the grant of inclusive tour authority and 1965 as a future year, the applicant estimates revenues at $19,629,000, total expenses of $14,985,160, for a net income of $1,815,420.

United States Overseas Airlines, Inc.

The predecessor of the applicant was Ralph W. Cox, Jr. d/b/a Ocean Air Tradeways, an individual proprietorship which received authority as a large irregular carrier in 1947. The applicant was incorporated in 1950 and Mr. Cox, owner of 80 percent of its stock, has continued since that time as the principal executive officer of the company. USOA was one of the 15 applicants in this proceeding which was granted interim operating certificates by the Board.[52]

In recent years the applicant has experienced a serious deterioration in its financial condition which led ultimately

---

[51] Appendix C.

[52] Order E-18884, October 5, 1962.

to revocation of its interim certificate. The Board expressed reservations concerning USOA's financial fitness at the time its interim operating certificate was granted, and on September 24, 1964, found it necessary to suspend the carrier's certificate immediately on the ground that the carrier was no longer fit from a financial standpoint.[52a] Subsequently, after hearing, the Board issued its decision finding, *inter alia,* that "the carrier's financial weakness, under any reasonable test of fitness that might be applied has now reached a point where it can no longer be found financially fit, willing, and able to hold authority as a

10211

supplemental carrier." [53] After the Board's action, the FAA suspended applicant's air carrier operating certificate, so that USOA does not now possess either economic or safety authority to engage in air transportation.

During the some 17 years of active service, USOA's transport activities were substantial and varied, reaching into virtually every facet of civil and military operations open to a supplemental air carrier. The applicant responded in many emergency situations, notably those involved in the Berlin Airlift, Korea, and the transportation of Hungarian refugees. Based in Wildwood, New Jersey, USOA was one of the few supplementals to have its own complete facilities for maintenance and overhaul require-

---

[52a] Order E-21325, September 24, 1964.

[53] *USOA Interim Certificate Proceeding,* Order E-21562, December 7, 1964, (p. 7). Reconsideration was denied by Order E-21677, January 14, 1965.

ments. All of its operations were conducted without a passenger fatality.[54]

A significant contributing factor to the applicant's difficulties was its continued reliance on revenues from individually ticketed passenger services despite the phase-out of such operations required by Public Law 87-528. As illustrated below, the degree of concentration was particularly evident during 1962 and 1963, the years immediately preceding expiration of such authority:

Transport Revenues (000)

	Total	% Civil Charter	% Military	% Other
1961	$9,691	1.4	59.3	39.3
1962	5,694	4.1	11.6	84.3
1963	4,746	6.2	4.6	89.2

10212

In making its decision to revoke USOA's interim operating certificate the Board had before it a history of the carrier's operations and financial condition through mid-1964. More recent information does not provide a realistic basis for anticipating any substantial improvement in the situation. As remnants of a once sizeable aircraft fleet, USOA has 6 DC-4 aircraft, four of which it intends to sell. Its pro forma balance sheet as at December 15, 1964, lists

[54] There were, however, over 20 instances of alleged safety violations in the 1959-1964 period, which involved civil penalties of some $6,200 and the issuance of numerous letters of correction or reprimand. On the economic side, one cease and desist order was issued by the Board as the result of the carrier's operations in excess of applicable frequency limitations on individually ticketed services. Order E-17822, December 12, 1961. In addition, USOA was twice disqualified by MATS for military contract service, once between March and October 1962 and again in 1963.

$317,923 in current assets. Some $243,000 are in accounts receivable and about $130,000 of this total represents accounts which, according to the applicant's financial witnesses, are not collectable. In contrast, USOA shows total current liabilities of $949,908 and a loss of $408,537.[55] No known source for additional financing was indicated on the record.

USOA also seeks liberalization of the "charter" definition to include split charters and inclusive tours. Assuming a certificate containing this authority and the initial use of two leased DC-7's, the applicant presented an estimate for 1965 as a future year that shows total flight revenues of $4,585,600, of which $1,779,600 (about 38 percent) would be from civil charters and inclusive tours, with the balance from military or other government charters. Giving effect to total costs of $4,254,700 the applicant predicts a net profit of $372,900. Using the same revenue estimate but USOA's actually experienced costs as opposed to the theoretical lower costs utilized by the carrier, the Bureau forecasts a net loss of $482,400 (with experienced costs for the six months ended June 30, 1961) or a loss of $1,388,800 (if the estimate is predicated on actual costs for June and July 1964).

---

[55] In addition, there is controversy concerning whether a $1.5 million item representing monies owed Ocean Air Tradeways, a partnership wholly owned by individual stockholders of the corporation, constitutes a long term debt or has been "forgiven" and might therefore appropriately be reflected as contributed capital. Although there was some oral testimony to the effect that the debt had been forgiven, the only written evidence of record is a written agreement whereunder the parties in interest agree to subordinate the debt to other creditors but not to eliminate it as an outstanding liability of the company.

(10212, 10213)

Vance International Airways, Inc.

Vance Roberts, the principal figure in this applicant, has had considerable aviation experience which extends back some thirty years. Prior to 1960, he operated small aircraft as an air taxi operator and large aircraft as a private carrier for hire. In 1960 he received, as an individual pro-

prietorship, interim authority from the Board which authorized operations as a supplemental air carrier and exempted him from the provisions of Title IV of the Act and Part 298 of the Board's Economic Regulations to the extent necessary to permit continuation of his air taxi services while holding supplemental authority. In 1962 the Board issued him similar authority pursuant to Public Law 87-528.[56] Recently the Board approved the transfer of Vance Roberts' authority to the applicant, Vance International Airways, Inc., a corporation wholly owned and controlled by Mr. Roberts and his wife.[57]

Prior to 1964 Vance Roberts' air transport business consisted primarily of the operation of charter flights, mostly of the single entity variety, in the Pacific Northwest, with some transborder operations into Canada. His home base consistently has been located at Boeing Field, Seattle, and all necessary maintenance and overhaul have been contracted. Applicant's aircraft fleet now consists of one C-46, one DC-3, and one DC-7, all owned by the carrier, and the applicant hopes to acquire an additional DC-7 in

---

[56] Order E-19112, December 19, 1962.

[57] See Orders E-21468, January 6, 1965, and E-22050, April 16, 1965.

May 1965 or sooner. There is no record of either economic or safety violations attributable to the carrier.[58]

Through the end of 1963 Roberts' operations with large aircraft were exceedingly modest, producing revenues of $8,000 in 1961, $23,000 in 1962, and $17,000 in 1963. In 1964, however, there was some expansion. To illustrate, in the first quarter of 1964 charter revenues totaled about $9,000; between April 1 and October 15, 1964, they rose to a total of approximately $150,000. The 1964 revenues through October 15, 1964, were almost equally divided between civil charters ($80,309), of which roughly 16 percent were derived from civil cargo charters, and domestic CAM operations ($80,333). In April 1964 an additional sales office was opened at Los Angeles to aid in the expansion program.

10214

In revenues, expenses, assets, and liabilities Vance has been the smallest of the operating supplementals, with operating results normally at or near the break-even point. The recent expansion of its operations has caused some strain on its resources. Its operating picture shows losses of $9,000 in 1962, $15,000 in 1963, and $1,000 in 1964. However, net worth has decreased from $41,000 in 1961 and 1962 to $24,000 in 1964, and its negative net working capital position has increased from $9,000 in 1963 to $45,000 in 1964.[59]

Considering 1965 as a future year, and assuming the operation of an additional DC-7 from June 1965 forward, the applicant forecasts a net profit of $101,421 on total

[58] The FAA suspended Roberts' DC-7 operation between August 13 and August 26, 1964, on the basis of a complaint which, so far as appears from this record, was unfounded.

[59] Appendix C.

revenues of $902,355. As a matter of judgment, the carrier believes it could increase its total revenues by 30 percent with authority to perform inclusive tours (25 percent) and split charters (5 percent). Expansion to the extent indicated would also entail new sales offices in Oakland/San Francisco and Honolulu, as well as additional flight crews and ground personnel.

World Airways, Inc.

This applicant is owned and controlled by Edward J. Daly, its president and sole stockholder, who has retained a competent and experienced staff to conduct its extensive operations. World is one of the applicants herein holding the conventional type of interim operating certificate.[60] In addition, its interim certificate was amended so as to make World, together with Trans International Airlines, the only two supplementals authorized to conduct traditional planeload civil passenger charters across the Pacific pending resolution of the issues in this proceeding.[61] More recently World has been granted authority to operate transatlantic civil passenger charters during the 1965 season.[62]

10215

World is now the largest and the most successful financially of the supplemental air carriers. Its strength has been derived primarily from its vast military services,

---

[60] Order E-18875, October 5, 1962.

[61] Order E-21304, September 21, 1964, reconsideration denied by Order E-21573, December 9, 1964. As noted in conjunction with the discussion of Trans International Airlines, *supra*, this authority is subject to various conditions, including specific Board authorization for each charter and general compliance with the requirements of Part 295 of the Board's Economic Regulations.

[62] Order E-22045, April 16, 1965.

and World's civil operations, at least until 1964, have played a relatively minor role. Thus, for example, in 1963 World's interstate civil cargo and passenger operations contributed only about $100,000 to a total of $20 million in revenues. Although World did have in the same year $1.7 million in revenues from transpacific civil passenger and cargo operations that were earned pursuant to its contract with Western Electric Company under which it provides scheduled service with DC-6 aircraft between Oakland and Kwajalein, Marshall Islands, via Honolulu, the bulk of its revenues have been obtained from two military operations: MATS international operations with jets over a route between California and the Philippines, Viet Nam, Bangkok, and Okinawa, and the LOGAIR daily domestic service with DC-6's.[63]

The dominance of the military revenues is illustrated by the tabulation below:

Transport Revenues (000)

	Total	% Civil Charter	% Military
1961	$14,632	9.2	89.0
1962	23,063	7.4	92.5
1963	20,462	8.7	90.2
1964*	24,852	10.8	89.2

In 1964 World undertook substantial and intensive steps to increase its civil operations. The carrier has been at-

[63] None of its operations has involved the carrier in asserted violations of an economic nature requiring formal enforcement action except as noted in f.n. 65, *infra*. Between 1960 and 1963 there were some 12 alleged safety violations that were settled on the basis of $2,500 in civil penalties and letters of reprimand or correction.

* Year ending September 30, 1964.

tempting to utilize its recently acquired transpacific civil passenger charter authority but has experienced considerable difficulty in obtaining the necessary landing rights. Noteworthy among World's achievements have been its highly successful single entity charter operation for the Chevrolet Motor Division of General Motors Corporation

10216

which alone produced $660,966 in revenues, as well as the around-the-world charter operation for the Tractor Division of the Ford Motor Company.[64] In addition, World developed in conjunction with Nationwide Charter and Conventions, Inc., its agent, a program designed to produce over $2 million in revenues from the operation of pro rata charters during the December 1964-May 1965 period between Boston, New York City, and Philadelphia, on the one hand, and Miami, on the other hand, and between New York and Honolulu. However, this latter program was not successfully implemented due to judicial injunctive action.[65]

The applicant's fleet presently consists of three Boeing 707-373C pure jets, with a fourth jet under contract for

---

[64] The Chevrolet sales incentive program involved transporting some 5,610 passengers from 37 departure cities to New York for two days, Nassau for two days, and return home. In total, this all-jet service took 34 days to complete and required the operation of approximately 145,000 aircraft miles.

[65] At the instance of Northeast Airlines a permanent injunction has been entered enjoining World from carrying out its arrangements with Nationwide on the ground that the types of charters contemplated may not be operated lawfully under World's interim operating certificate. Similar actions by Northeast are pending against Capitol and TIA.

delivery in October 1965, and seven DC-6A/B's.[66] Until recently these aircraft, all owned by the carrier, were maintained and overhauled under contractual arrangements. On October 1, 1964, World established an aircraft maintenance facility at Oakland International Airport, known as the World Air Center, which is a wholly owned subsidiary of the company. This facility has the capability to provide base and line maintenance not only for World's piston and jet aircraft but for other carriers as well.

Except for its need for further diversification to increase the proportion of civil revenue for its economic base there can be no question concerning World's financial and operational strength. In the year ended September 30, 1964, it led the supplemental industry in total operating revenues, operating profits, operating ratio, assets, net worth, and working capital. Operating profits have progressively grown from $1,261,000 in 1961 to $6,930,000 in 1964 while net worth has increased from $1,690,000 to $8,321,000 in the same years. World has had a healthy net working capital position in three of the four years during the 1961-1964 period, which reached the level of $4,654,000 in 1964.[67]

10217

Reduced to its essentials, World's position is that it and other supplementals having pure jet aircraft should receive unconditional worldwide authority, while other applicants would be restricted to interstate operations. It also supports split charter authority (for affinity charters only) and inclusive tour authority. Assuming that it receives the

[66] Press reports indicate that World has ordered a fifth Boeing 707 for delivery in the spring of 1966. *Aviation Daily*, Vol. 159, No. 18, May 26, 1965, p. 152.

[67] Appendix C.

broad authorization it seeks and the right to transport inclusive tours, the carrier's future year forecast for commercial charter operations is $7,630,235 in revenues, expenses of $5,959,843, for a net income of $625,196.[68]

Zantop Air Transport, Inc.

The predecessor of the applicant was Zantop Flying Service, a partnership founded in 1946 by the Zantop brothers —Howard, Lloyd, and Duane. Ten years later the business was incorporated as Zantop Air Transport, Inc., the present applicant. Howard Zantop serves as President, Lloyd as Vice President and Treasurer, and Duane as Vice President and Secretary; each owns one-third of the outstanding stock of the company. The balance of Zantop's managerial staff is well qualified and experienced in airline operations.

In 1953 Zantop began its now extensive operations transporting property for Ford, General Motors, and Chrysler purportedly as a commercial operator or private carrier for hire, for which no economic authority from the Board was required. These operations, together with the LOGAIR military contract service begun in 1960, still form the backbone of the company's air transport activities. The automotive operations generally involve the transportation of parts and material for two or more of the manufacturers aboard the same aircraft, largely from the Detroit area to seven or eight assembly plant locations in the continental United States on a regular and expedited basis.

In 1962 the applicant sought to acquire by transfer the temporary supplemental air carrier certificate of Coastal Air Lines for the reason, among others, that air carrier

[68] World also makes the request, unique among the applicants, that the descriptive label of its classification be changed from "supplemental air carrier" to "independent air carrier."

status was necessary in order to enable Zantop to continue its military services. In May 1962 the Board approved the transfer and granted Zantop an exemption authorization that would permit it to continue to perform the automotive operations, subject to certain conditions.[69] Thereafter the Board awarded the applicant the conventional type of in-

10218

terim certificate under Public Law 87-528 and determined that the exemption previously granted with respect to the contract services continued in full force and effect.[70]

As is evident from the foregoing, the applicant has been almost exclusively a civil and military cargo specialist operating between points in the continental United States. Although Zantop has been able to maintain a favorable balance between civil and military operations, the civil operations have consisted predominantly of the automotive cargo services for Ford, General Motors, and Chrysler.[71] To illustrate, for the year ended June 30, 1964, Zantop grossed $5,005,838 from the automotive operations, $751,530 from civil charters, and $8,344,442 from the domestic military services, for total transport revenues of $14,101,-

[69] Order E-18318, May 9, 1962. The primary conditions prohibited the provision of supplemental air transportation between the same points involved in the automotive contracts and the commingling of common carrier and contract cargo, and required Zantop to maintain separate books and records for the two different types of operation.

[70] Order E-18864, October 5, 1962.

[71] In 1962, Zantop had $7,851,000 in total transport revenues of which 33.8 percent were civil and 56.2 percent military. The comparable figures for 1963 were $12,969,000 in total revenues with 38.7 percent civil and 61.3 percent military. For the year ended September 30, 1964, total transport revenues reached $16,822,000 (53.7 percent military and 46.3 percent civil).

(10218, 10219)

811. The carrier did not begin civil passenger charters until the second half of 1963. Revenues from this source were about $14,000 in 1963 and reached a total of $51,300 in the first three quarters of 1964.

With the dollar volume of its present operations reaching the $17 million mark, Zantop's aircraft fleet has expanded rapidly. As of September 1964, it owned 31 aircraft consisting of 21 C-46's, two DC-4's, one DC-3, and seven DC-6A's. It leases an additional 28 aircraft—22 C-46's, one DC-4, two DC-3's, and three Argosy turbo-prop AW650's which are being leased-purchased from a Zantop subsidiary. Of these 59 aircraft three DC-3's and one DC-4 are in passenger configuration. A good part of the maintenance and overhaul of these aircraft is performed at Zantop's home base at Detroit Metropolitan Airport, Inkster, Michigan, and at its west coast base at Ontario International Airport, Ontario, California. The applicant also locates additional personnel at various points throughout the country to perform routine maintenance functions as may be required.[72]

10219

The applicant has had significant and continuous growth in both its revenues and total assets. Gross revenues at the end of 1958 were $1,383,904 in contrast to the present day level and total assets increased from $4,496,000 in 1962 to $11,723,000 at the end of September 1964. Zantop's strength is also illustrated by the growth in operating profits from

[72] Although no economic enforcement action has been brought against the applicant, the record shows some 11 instances of alleged safety violations in the 1960-1964 period. The latter resulted in civil penalties totaling $2,250 and various letters of reprimand or correction.

$714,000 in 1962 to $2,194,000 in 1964 and the increase in net worth from $523,000 to $1,513,000 in the same years.[73] The one question mark has been the carrier's net working capital position which has hovered around a negative figure of about $1 million for the past three years. According to the applicant's witnesses, the persistent deficiencies in working capital do not reflect any inherent weakness in Zantop's financial condition but are attributable to the fact that the carrier's current liabilities always include substantial amounts for contract payments on aircraft that are due within a 12-month period, the collateral for which is not offset in current assets but in fixed assets of property and equipment.

Assuming 100 percent utilization of its existing military contracts and 10 percent increase in its automotive contract and civil charter revenues, Zantop forecasts for 1965 total revenues of $17,735,000 and net earnings of $817,745.[74] The applicant has made no precise estimate for the future should it receive the worldwide certificate, with inclusive tour and split charter authority, which it seeks, although it contemplates the addition of two piston aircraft of the DC-6B type and two convertible turbo jets in that eventuality. The carrier does not now have any definitive plans for the purchase of pure jet aircraft.

---

[73] Appendix C.

[74] The total revenue figure is composed of $6 million in contract revenues, $1 million from civil charters, and $10,735,000 from its military services.

(10220)

10220

APPENDIX B

(See opposite) ☞

APPENDIX B

GEOGRAPHICAL AND FUNCTIONAL DISTRIBUTION OF SUPPLEMENTAL CARRIER CHARTER REVENUES
1961

	AAXICO	AMERICAN FLYERS	CAPITOL	JOHNSON	MODERN	ONA	PURDUE	SATURN	SOUTHERN	STANDARD	TIA	USOA	VANCE	WORLD	ZANTOP	TOTAL
CIVIL PASSENGERS	$	$ 278,753	$ 346,623	$60,894	$ 72,424	$ 382,526	$349,343	$157,244	$	$ 95,818	$ 97,276	$ 71,976	$	$ 1,599,254	$	$ 3,512,131
Interstate		257,130	279,313	60,894	62,276	363,092	302,019	157,244		95,818	97,276	66,948		490,148		2,232,158
Overseas																
Latin America & Caribbean		12,775														12,775
Transpacific														1,109,106 1/		1,109,106
Foreign																
North America		8,848			10,148	19,434	47,324					5,028				90,782
Latin America & Caribbean																
Transpacific			67,310													67,310
CIVIL CARGO	$	$ 9,311	$ 73,588	$ 3,551	$ 366	$	$ 24,512	$	$ 389,620	$	$ 17,440	$ 35,427				$ 553,815
Interstate		9,311	39,348	3,551	366		24,512		43,209		17,440	10,003				147,740
Overseas																
Latin America & Caribbean									138,226							138,226
Transpacific														1/		
Foreign																
North America			2,412						62,216							64,628
Latin America & Caribbean									145,969			25,424				171,393
Transpacific																
Transatlantic			31,828													31,828
MILITARY PASSENGER	$ 267,540	$ 936,407	$ 2,487,248	$	$ 22,009	$10,583,105	$	$664,614	$2,400,856	$ 50,703	$1,165,168	$2,991,540	$	$ 4,032,711		$25,601,901
Interstate	267,540	936,407	568,196		22,009	3,632,176		650,899		50,703	41,850	647,011				6,816,791
Overseas						1,640,596					292,024					1,932,620
Foreign			1,919,052			5,310,333		13,715	2,400,856		831,294	2,344,529		4,032,711		16,852,490
MILITARY CARGO	$3,900,659	$	$ 7,328,642	$	$ 7,487	$	$	$	$ 597,856	$	$2,982,887	$2,621,759	$	$ 8,995,382	$5,047,864	$31,482,536
Interstate	3,900,659		6,447,092		7,487							2,609,599		7,792,815	5,047,864	25,805,516
Overseas											732,269					732,269
Foreign			881,550						597,856		2,250,618	12,160		1,202,567		49,447,751
TOTAL	$4,168,199	$1,224,471	$10,236,101	$64,445	$102,286	$10,965,631	$373,855	$821,858	$3,388,332	$146,521	$4,262,771	$5,720,702	$	$14,627,347	$5,047,864	$61,150,383

1/ Mixed passenger/cargo operations. Cargo revenue is included with passenger revenue.

SOURCE: Bureau Exhibits BER-100, 200, 300, and 400.

GEOGRAPHICAL AND FUNCTIONAL
DISTRIBUTION OF SUPPLEMENTAL
CARRIER CHARTER REVENUES
1962

	AAXICO	AMERICAN FLYERS	CAPITOL	JOHNSON	MODERN	ONA	PURDUE	SATURN	SOUTHERN	STANDARD	TIA	USOA	VANCE	WORLD	ZANTOP	TOTAL
CIVIL PASSENGER	$	$ 349,277	$ 350,245	$75,059	$ 41,605	$ 598,951	$320,925	$175,897	$ 37,416	$ 185,619	$	$ 96,944	$15,394	$ 1,854,271	$	$ 4,101,604
Interstate		333,333	350,245	75,059	41,605	598,951	283,973	167,067		185,619		37,042	14,404			2,087,298
Overseas																
Latin America & Caribbean								8,830				2,083				10,913
Transpacific														1,854,271 1/		1,854,271
Foreign																
North America		15,944					36,952						991			53,887
Latin America & Caribbean												21,101				21,101
Transpacific									37,416 1/ 2/			36,718				74,134
CIVIL CARGO	$ 124,765	$ 23,781	$ 51,106	$ 9,355	$	$	$ 51,303	$	$ 326,522	$	$	$ 76,265	$ 2,684	$	$ 360,043	$ 1,025,824
Interstate		23,781	29,420	9,355			43,405		21,836			33,658	2,684		360,043	524,182
Overseas																
Latin America & Caribbean	8,160								148,699			18,743				175,602
Transpacific														1/		
Foreign																
North America	3,110						7,898		38,546			5,003				54,557
Latin America & Caribbean			6,345						117,441			6,458				130,244
Transpacific									1/ 2/							
Transatlantic	113,495		15,341									12,403				141,239
MILITARY PASSENGER	$ 639,126	$1,368,017	$ 6,233,586	$	$899,344	$10,192,167	$	$770,928	$3,781,792	$ 852,197	$ 4,693,047	$666,066	$	$10,292,512	$	$40,388,782
Interstate	639,126	1,368,017	298,125		899,344	1,992,033		770,928		852,197		129,770				6,949,540
Overseas						1,492,994					3,015,822			12,073		4,520,889
Foreign			5,935,461			6,707,140			3,781,792		1,677,225	536,296		10,280,439		28,918,353
MILITARY CARGO	$ 9,382,837	$ 20,986	$ 8,678,066	$	$ 14,104	$ 460,045	$	$ 7,020	$1,043,325	$	$ 5,427,115	$ 5,614	$	$11,204,764	$6,642,552	$42,886,428
Interstate	8,519,980	20,986	5,121,694		14,104	3,190					11,683	5,346		5,305,518	6,642,552	25,645,053
Overseas						331,809					2,772,663			636,733		3,741,205
Foreign	862,857 3/		3,556,372			125,046		7,020	1,043,325		2,642,769	268		5,262,513		13,500,170
TOTAL	$10,146,728	$1,762,061	$15,313,003	$84,414	$955,053	$11,251,163	$372,228	$953,845	$5,189,055	$1,037,816	$10,120,162	$844,889	$18,079	$23,351,547	$7,002,595	$88,402,638

1/ Mixed passenger/cargo operations. Cargo revenue is included with passenger revenue.
2/ Intra-Asia operations.
3/ Aaxico operated military overseas cargo charters in 1962. Revenue for those operations is included with military foreign cargo charters since it could not be segregated.

SOURCE: Bureau Exhibits BER-100, 200, 300 and 400.

GEOGRAPHICAL AND FUNCTIONAL
DISTRIBUTION OF SUPPLEMENTAL
CARRIER CHARTER REVENUES
1963

	AAXICO	AMERICAN FLYERS	CAPITOL	JOHNSON	MODERN	ONA	PURDUE	SATURN	SOUTHERN	STANDARD	TIA	USOA	VANCE	WORLD	ZANTOP	TOTAL
CIVIL PASSENGER	$	$ 706,824	$ 357,850	$85,762	$ 48,524	$ 588,373	$483,950	$ 395,366	$ 54,230	$1,109,809	$ 228,406	$245,478	$ 3,331	$ 1,780,316	$ 13,955	$ 6,102,175
Interstate		643,118	357,850	84,722	48,524	588,373	456,079	347,106		1,109,809	228,406	243,328	1,130	69,890	13,955	4,192,290
Overseas																
Latin America & Caribbean		20,011														20,011
Transpacific														1,710,426 1/		1,710,426
Foreign																
North America		43,695		1,040			27,871	48,260				2,150	2,201			125,217
Latin America & Caribbean																
Transpacific									54,230 2/							54,230
CIVIL CARGO	$ 6,155	$ 2,052	$ 141,848	$ 9,681	$	$ 17,411	$ 14,812	$	$ 468,098	$ 3,633	$	$ 19,196	$ 7,684	$ 31,840	$ 618,751	$ 1,341,161
Interstate	6,155	2,502	42,348	9,681		17,411	14,358		30,403	3,633		3,114	7,684	31,840	604,703	773,382
Overseas																
Latin America & Caribbean									195,452			8,330				203,782
Transpacific			85,500											1/		85,500
Foreign																
North America							454		27,849			7,752			7,597	43,652
Latin America & Caribbean									187,609						6,451	194,060
Transpacific									26,785							26,785
Transatlantic			14,000													14,000
MILITARY PASSENGER	$ 342,370	$1,657,448	$ 4,336,417	$	$746,013	$1,384,925	$ 90,368	$1,157,960	$4,028,752	$1,295,434	$ 8,124,499	$222,333	$ 270	$11,084,424	$ 133,834	$34,605,047
Interstate	342,370	1,657,448	226,974		746,013	794,087	90,368	1,157,960		1,295,434	244,595	222,333	270		133,834	6,911,686
Overseas											6,344,558			11,084,424		6,344,558
Foreign			4,109,443			590,838			4,028,752		1,535,346					21,348,803
MILITARY CARGO	$8,282,811	$	$ 7,754,786	$	$	$ 177,295	$	$	$1,078,970	$	$ 2,544,493	$	$ 999	$ 7,376,900	$7,816,144	$35,032,398
Interstate	8,242,453		6,717,882										999	4,629,056	7,816,144	27,406,534
Overseas	3/										1,450,791					1,450,791
Foreign	40,358 3/		1,036,904			177,295			1,078,970		1,093,702			2,747,844		6,175,073
TOTAL	$8,631,336	$2,366,324	$12,590,901	$95,443	$794,537	$2,168,004	$589,130	$1,553,326	$5,630,050	$2,408,876	$10,897,398	$487,007	$12,284	$20,273,480	$8,582,684	$77,080,780

1/ Mixed passenger/cargo operations. Cargo revenue is included with passenger revenue.
2/ Intra-Asia operations.
3/ Aaxico operated military overseas cargo charters in 1963. Revenue from these operations is included with military foreign cargo since it could not be segregated.

SOURCE: Bureau Exhibits BER-100, 200, 300, and 400.

GEOGRAPHICAL AND FUNCTIONAL
DISTRIBUTION OF SUPPLEMENTAL
CARRIER CHARTER REVENUES
1964

	AAXICO	AMERICAN FLYERS	CAPITOL	JOHNSON	MODERN	ONA[1]	PURDUE	SATURN	SOUTHERN	STANDARD[2]	TIA	USOA[3]	VANCE	WORLD	ZANTOP	TOTAL
CIVIL PASSENGER	$	$2,085,158	$ 5,182,595	$79,715	$ 134,441	$	$474,949	$3,878,041	$ 468,174	$	$ 2,368,686	$268,017	$103,020	$ 2,403,998	$ 63,502	$17,510,296
Interstate		1,978,896	1,239,428	79,715	134,441		409,712	1,357,263			2,351,911	227,672	98,553	983,277	63,502	8,924,370
Overseas											9,114			1,206,370		1,215,484
Foreign		106,262	3,943,167[4]				65,237	2,520,778[4]	468,174[5]		7,661	40,345	4,467	214,351		7,370,442
CIVIL CARGO	$ 72,647	$	$ 563,507	$	$	$	$ 39,209	$	$ 895,491	$	$ 53,000	$ 5,000	$ 15,957	$ 613,266	$ 8,214,219	$10,472,296
Interstate	72,647		340,191				39,209		27,865				15,957	132,405	8,122,174	8,750,448
Overseas									294,679			5,000		480,861		780,540
Foreign			223,316						572,947		53,000				92,045	941,308
MILITARY PASSENGER	$	$3,076,566	$ 2,983,999	$	$ 900,705	$	$ 65,933	$1,340,511	$3,497,555	$	$ 6,749,570	$498,766	$ 95,600	$11,466,192	$ 215,334	$30,890,731
Interstate		3,076,566	537,723		900,705		65,933	1,340,511			2,629,692	498,766	95,600		215,334	9,360,830
Overseas			442,086													442,086
Foreign			2,004,190						3,497,555		4,119,878			11,466,192		21,087,815
MILITARY CARGO	$8,592,414	$	$ 7,091,841	$	$	$	$	$	$ 877,670	$	$ 3,949,309	$	$	$10,931,711	$ 9,035,748	$40,478,693
Interstate	8,592,414		5,116,679								102,694			5,238,272	9,035,748	28,085,807
Overseas											196,299					196,299
Foreign			1,975,162						877,670		3,650,316			5,693,439		12,196,587
CIVIL	72,647	2,085,158	5,746,102	79,715	134,441		514,158	3,878,041	1,363,665		2,421,686	273,017	118,977	3,017,264	8,277,721	27,982,592
MILITARY	8,592,414	3,076,566	10,075,840	0	900,705		65,933	1,340,511	4,375,225		10,698,879	498,766	95,600	22,397,903	9,251,082	71,369,424
TOTAL	$8,665,061	$5,161,724	$15,821,942	$79,715	$1,035,146	$	$580,091	$5,218,552	$5,738,890	$	$13,120,565	$771,783	$214,577	$25,415,167	$17,528,803	$99,352,016
Percentage of Total Charter Revenues 7/ Civil	0.84	100.00	36.32	100.00	100.00		100.00	100.00	23.76		18.46	100.00	100.00	11.85	47.22	
Military	99.16	00.0	63.68	00.0	0.00		00.0	00.0	76.24		81.54	00.0	00.0	88.15	52.78	

1/ Voluntarily discontinued operations as of October 4, 1963.
2/ Conducted operations during the month of January. The geographical and functional distribution as well as the volume of the revenues derived from these operations is unknown because of incomplete reporting by the carrier.
3/ Interim certificate revoked by E-21562, dated December 7, 1964.
4/ The vast majority of this revenue was derived from transatlantic passenger operations.
5/ Presumably intra-Asia operations.
6/ Includes $7,016,119 from contract operations.
7/ The percentages recorded as civil and military were obtained by following the policy of the Department of Defense when awarding long-term contracts. That Department has announced that military transport contracts, beginning in fiscal 1966, will be limited in amount so that carriers who receive contracts will derive at least 30 percent of their transportation revenues from commercial sources. CAM operations are taken into account for carriers with long-term contracts in determining the 70 percent maximum imposed by the Department, but such operations are not considered for the carriers with no long-term contracts.

APPENDIX C

SUPPLEMENTAL CARRIERS FINANCIAL AND REVENUE DATA
FOR FISCAL YEAR ENDING SEPTEMBER 30, 1964
(DOLLARS IN THOUSANDS)

Carrier 1/	Transport Revenues: Contract and Charter: Civilian: Rank	Civilian: Amount (1)	Civilian: Percent (2)	Military: Rank	Military: Amount (3)	Military: Percent (4)	Individual Sales: Rank	Individual Sales: Amount (5)	Individual Sales: Percent (6)	Total: Rank	Total: Amount (7)	Total Operating Revenue 2/: Rank	Total Operating Revenue 2/: Amount (8)	Operating Profit: Rank	Operating Profit: Amount (9)	Operating Ratio: Rank	Operating Ratio: Percent (10)	Total Assets: Rank	Total Assets: Amount (11)	Net Worth: Rank	Net Worth: Amount (12)	Current Ratio: Rank	Current Ratio: Ratio (13)	Working Capital: Rank	Working Capital: Amount (14)
1964																									
Total Supplementals		25,240	25.1		71,865	71.6		3,315	3.3		100,420		103,033		12,817		87.56		5,090		19,625		0.9		(2,978)
AAXICO	11	104	1.2	5	8,547	98.8		-	-	5	8,651	5	8,733	5	723	4	91.72	5	7,082	2	5,517	1	4.1	2	4,599
American Flyers	6	1,483	33.8	7	2,890	65.9	6	13	0.3	8	4,386	8	4,433	7	207	7	95.33	6	4,612	10	228	8	0.5	10	(830)
Capitol Airways	2	3,340	31.8	2	11,137	66.4	2	295	1.8	3	16,772	2	17,933	4	924	5	94.85	2	6,102	5	952	9	0.4	13	(3,756)
Johnson Flying Service	14	72	100.0		-			-		14	72	11	824	13	(118)	13	(114.32)	10	793	7	450	5	1.5	5	144
Modern Air Transport	12	100	9.0	9	1,003	90.1	7	10	0.9	10	1,113	10	1,124	12	(67)	11	(105.96)	14	458	13	(111)	6	0.7	7	(99)
Overseas National 3/	15	21	100.0		-			-		15	21	15	21	14	(230)	15	(1,195.24)	13	504	14	(814)	11	9.2	15	(1,130)
Purdue Aeronautics	8	506	86.9	11	76	13.1		-		11	582	12	584	10	(33)	10	(105.65)	11	646	6	487	2	2.4	4	153
Roberts Vance	13	78	53.4	12	68	46.6		-		13	146	14	152 6/	8	(1)	8	(100.66)	15	175	11	24	8	0.5	6	(45)
Saturn Airways	3	3,455	73.6	8	1,220	26.0	5	21	0.4	7	4,696	7	4,704	11	(51)	9	(101.08)	8	1,677	9	236	7	0.6	9	(341)
Southern Air Transport	7	1,042	18.9	6	4,281	77.7	4	186	3.4	6	5,509	6	5,736	6	278	6	95.15	7	1,917	8	417	4	1.7	3	524
Standard Airways 4/	10	159	33.9	13	66	14.1	3	244	52.0	12	469	13	437	9	(31)	12	(107.09)	12	526	12	-8/	8	0.5	8	(278)
TIA	5	2,087	16.1	3	10,887	83.9				4	12,974	4	13,155	2	2,884	2	78.08	3	15,639	3	3,901	9	0.4	14	(4,463)
USOA 5/	9	310	9.2	10	499	14.9	1	2,546	75.9	9	3,355	9	3,447	15	(792)	14	(122.98)	9	1,535	15	(1,496) 7/	10	0.3	11	(891)
World Airways	4	2,690	10.8	1	22,162	89.2		-		1	24,852	1	24,913	1	6,930	1	72.18	1	31,701	1	8,321	3	1.8	1	4,654
Zantop Air Transport	1	7,793	46.3	4	9,029	53.7		-		2	16,822	3	16,837	3	2,194	3	86.97	4	11,723	4	1,513	6	0.7	12	(1,219)

1/ Sources of data: Columns 1, 3, 5, 8, and 9: CAB-BAS Air Carrier Analytical Charts and Summaries for fiscal year 1964. Columns 11 through 14: Analyses of CAB Form 41 Schedules for fiscal year 1964. Any exceptions as to sources are noted in separate footnotes.

2/ Two classifications of revenue have been omitted: (a) A miscellaneous column of other transport revenue, (b) A column of non-transport revenue.

3/ Since the carrier suspended operations 12/4/63, these data have little significance.

4/ Carrier suspended operations 2/12/64; last report filed 12/31/63; bankrupt 4/27/64. These data have limited significance.

5/ Carrier suspended operations 9/25/64.

6/ The source of information is Form 41. The analytical charts reported only $58(000) of operating revenue. Form 41 reported $152(000) which is included here.

7/ This figure was reported on CAB Form 41 as a positive $56(000) net worth, which reflected a $1,552(000) long term debt as forgiven and hence a part of net worth. However, E-21562 considered the debt as not forgiven and therefore not part of net worth.

8/ Less than $1(000).

SUPPLEMENTAL CARRIERS FINANCIAL AND REVENUE DATA
FOR FISCAL YEAR ENDING SEPTEMBER 30, 1963
(DOLLARS IN THOUSANDS)

Carrier 1/	Transport Revenues: Contract and Charter: Civilian: Rank	Civilian: Amount (1)	Civilian: Rank	Civilian: Percent (2)	Contract and Charter: Military: Rank	Military: Amount (3)	Military: Rank	Military: Percent (4)	Individual Sales: Rank	Individual Sales: Amount (5)	Individual Sales: Rank	Individual Sales: Percent (6)	Total: Rank	Total: Amount (7)	Total Operating Revenue 2/: Rank	Total Operating Revenue 2/: Amount (8)	Operating Profit: Rank	Operating Profit: Amount (9)	Operating Ratio: Rank	Operating Ratio: Percent (10)	Total Assets: Rank	Total Assets: Amount (11)	Net Worth: Rank	Net Worth: Amount (12)	Current Ratio: Rank	Current Ratio: Ratio (13)	Working Capital: Rank	Working Capital: Amount (14)
1963																												
Total Supplementals		14,924		15.5		75,682		78.7		5,500		5.8		96,106		97,737		5,185		94.69		99,096		12,782		0.7		(8,820)
AAXICO	13	54	15	0.6	4	9,270	1	99.4		-			5	9,324	5	9,357	3	1,440	2	84.62	5	6,850	1	4,663	1	3.3	1	3,769
American Flyers	8	481	8	22.0	9	1,643	7	75.0	5	67	3	3.0	10	2,191	10	2,319	11	(275)	12	111.86	6	4,831	9	170	9	0.4	10	(784)
Capitol Airways	2	2,411	9	14.9	2	13,443	6	83.1	3	339	5	2.0	2	16,193	2	16,331	6	164	7	99.00	2	19,938	5	588	10	0.3	15	(4,389)
Johnson Flying Service	11	190	1	100.0		-		-		-		-	14	190	12	977	7	99	4	89.87	11	719	6	486	2	2.3	3	227
Modern Air Transport	14	46	13	6.1	11	697	3	92.6	7	10	6	1.3	12	753	13	778	10	(71)	10	109.13	14	426	13	(52)	6	0.7	6	(74)
Overseas National	3	1,958	5	36.9	7	3,312	9	62.3	6	43	7	0.8	7	5,313	7	5,354	14	(650)	13	112.14	7	3,258	14	(536)	11	0.2	14	(2,326)
Purdue Aeronautics	9	466	3	86.9	13	70	12	13.1		-			13	536	14	553	9	(19)	9	103.44	12	693	7	458	4	1.7	4	76
Roberts Vance	15	13	2	92.9	14	1	13	7.1					15	14	15	15	8	(15)	15	200.00	15	51	12	20	7	0.6	5	(9)
Saturn Airways	6	926	4	47.6	10	1,020	11	52.4					11	1,946	11	2,001	8	(15)	8	100.75	9	2,107	10	163	9	0.4	9	(582)
Southern Air Transport	7	533	10	8.5	6	5,550	5	88.8	4	166	4	2.7	6	6,249	6	6,381	5	269	6	95.78	10	1,968	8	283	3	1.8	2	490
Standard Airways	5	1,028	7	32.4	8	1,729	10	54.4	2	419	2	13.2	9	3,176	9	3,141	12	(450)	14	114.33	13	612	11	31	7	0.6	7	(227)
TIA	12	148	14	1.3	3	10,971	2	98.7					4	11,119	4	11,151	2	2,193	1	80.33	3	16,493	3	2,642	8	0.5	13	(2,062)
USOA	10	352	12	6.9	12	270	14	5.3	1	4,456	1	87.8	8	5,078	8	5,143	13	(493)	11	109.59	8	3,169	15	(1,522)	10	0.3	12	(1,374)
World Airways	4	1,777	11	8.3	1	19,749	4	91.7					1	21,526	1	21,722	1	2,221	3	89.78	1	30,015	2	4,620	5	0.9	8	(424)
Zantop Air Transport	1	4,541	6	36.3	5	7,957	8	63.7					3	12,498	3	12,514	4	787	5	93.71	4	7,966	4	768	7	0.6	11	(1,131)

1/ Sources of data: Columns 1, 3, 5, 8, and 9: CAB-BAS Air Carrier Analytical Charts and Summaries for fiscal year 1963. Columns 11 through 14: Analyses of CAB Form 41 Schedules for fiscal year 1963.

2/ Two classifications of revenue have been omitted: (a) A miscellaneous column of other transport revenue, (b) A column of non-transport revenue.

SUPPLEMENTAL CARRIERS FINANCIAL AND REVENUE DATA
FOR FISCAL YEAR ENDING SEPTEMBER 30, 1962
(DOLLARS IN THOUSANDS)

Carrier 1/	Transport Revenues: Contract and Charter: Civilian: Rank	Civilian: Amount (1)	Civilian: Rank	Civilian: Percent (2)	Military: Rank	Military: Amount (3)	Military: Rank	Military: Percent (4)	Individual Sales: Rank	Individual Sales: Amount (5)	Individual Sales: Rank	Individual Sales: Percent (6)	Total: Rank	Total: Amount (7)	Total Operating Revenue 2/: Rank	Total Operating Revenue 2/: Amount (8)	Operating Profit: Rank	Operating Profit: Amount (9)	Operating Ratio: Rank	Operating Ratio: Percent (10)	Total Assets: Rank	Total Assets: Amount (11)	Net Worth: Rank	Net Worth: Amount (12)	Current Ratio: Rank	Current Ratio: Ratio (13)	Working Capital: Rank	Working Capital: Amount (14)
1962																												
Total Supplementals		9,222		12.2		52,240		74.3		10,224		13.5		75,686		77,775		5,266		93.23		56,951		6,778		0.8		(5,208)
AAXICO 3/																												
American Flyers	7	343	6	16.3	7	1,383	7	65.7	6	380	4	18.0	9	2,106	9	2,296	4	419	1	81.75	11	781	7	324	3	1.7	2	220
Capitol Airways	1	2,505	7	15.0	2	13,269	5	79.4	4	947	9	5.6	2	16,721	2	17,180	6	280	10	98.37	1	15,922	3	894	6	0.8	12	(1,077)
Johnson Flying Service	6	603	1	100.0		-							12	603	11	1,136	13	(60)	12	105.28	10	846	6	496	4	1.6	4	161
Modern Air Transport	13	45	12	4.9	9	744	4	80.7	8	133	6	14.4	11	922	12	944	8	101	5	89.30	13	344	13	31	6	0.8	6	(22)
Overseas National	4	608	9	7.7	4	5,893	6	75.1	3	1,350	5	17.2	4	7,851	4	7,969	9	58	11	99.27	7	1,937	11	71	7	0.7	10	(497)
Purdue Aeronautics 4/	8	295	2	99.3	12	2	12	0.7					13	297	13	351	11	7	8	98.00	12	753	5	518	1	4.0	3	170
Roberts Vance	14	16	3	69.6		-			11	7	3	30.4	14	23	14	25	12	(9)	14	136.00	14	55	12	41	2	3.7	5	8
Saturn Airways	5	607	4	45.1	10	642	9	47.8	10	96	8	7.1	10	1,345	10	1,397	10	26	9	98.14	8	1,057	10	122	9	0.4	9	(285)
Southern Air Transport	9	262	11	5.4	5	4,201	3	86.5	5	392	7	8.1	6	4,855	6	5,051	5	294	7	94.18	6	2,135	8	178	6	0.8	8	(246)
Standard Airways	11	147	10	6.0	11	401	11	16.3	2	1,914	2	77.7	8	2,462	8	2,590	7	171	6	93.40	9	910	9	140	8	0.6	7	(191)
TIA	12	52	14	0.6	3	8,731	1	98.0	9	129	10	1.4	3	8,912	3	8,950	2	1,001	4	88.82	3	11,239	2	1,138	8	0.6	14	(2,070)
USOA	10	196	13	3.2	8	1,147	10	19.0	1	4,698	1	77.8	5	6,041	5	6,125	14	(679)	13	111.09	5	4,638	14	(919)	8	0.6	13	(1,256)
World Airways	3	1,674	8	8.7	1	17,405	2	90.4	7	178	11	0.9	1	19,257	1	19,465	1	2,943	3	84.88	2	11,848	1	3,221	5	1.2	1	908
Zantop Air Transport 5/	2	1,869	5	43.6	6	2,422	8	56.4					7	4,291	7	4,296	3	714	2	83.38	4	4,496	4	523	8	0.6	11	(1,031)

1/ Sources of data: Columns 1, 3, 5, 8, and 9: CAB-BAS Air Carrier Analytical Charts and Summaries for fiscal year 1962. Columns 11 through 14: Analyses of CAB Form 242 for fiscal year 1962.
2/ Two classifications of revenue have been omitted: (a) A miscellaneous column other transport revenue, (b) A column of non-transport revenue.
3/ Not operating as supplemental during fiscal 1962. Inaugurated supplemental operations 10/9/62.
4/ Carrier inaugurated supplemental operations 12/7/61.
5/ Carrier inaugurated supplemental operations 6/8/62.

SUPPLEMENTAL CARRIERS FINANCIAL AND REVENUE DATA
FOR FISCAL YEAR ENDING SEPTEMBER 30, 1961
(DOLLARS IN THOUSANDS)

Carrier 1/	Transport Revenues: Contract and Charter: Civilian: Rank	Civilian: Amount (1)	Civilian: Rank	Civilian: Percent (2)	Contract and Charter: Military: Rank	Military: Amount (3)	Military: Rank	Military: Percent (4)	Individual Sales: Rank	Individual Sales: Amount (5)	Individual Sales: Rank	Individual Sales: Percent (6)	Total: Rank	Total: Amount (7)	Total Operating Revenue 2/: Rank	Total Operating Revenue 2/: Amount (8)	Operating Profit: Rank	Operating Profit: Amount (9)	Operating Ratio: Rank	Operating Ratio: Percent (10)	Total Assets: Rank	Total Assets: Amount (11)	Net Worth: Rank	Net Worth: Amount (12)	Current Ratio: Rank	Current Ratio: Ratio (13)	Working Capital: Rank	Working Capital: Amount (14)
1961																												
Total Supplementals		7,989		13.5		42,654		71.9		8,647		14.6		59,290		62,354		1,879		96.99		27,716		1,222		0.9		(1,552)
AAXICO 6/																												
American Flyers	8	224	6	12.1	7	1,117	6	60.3	5	511	6	27.6	7	1,852	7	1,868	9	17	10	99.09	10	410	9	(45)	9	0.4	8	(146)
Capitol Airways	1	3,458	2	24.5	2	10,244	4	72.6	6	408	9	2.9	1	14,110	1	14,319	2	378	7	97.36	4	2,876	2	981	5	1.0	6	(60)
Johnson Flying Service	6	295	1	100.0									11	295	9	1,657	4	275	1	83.40	8	1,021	3	498	2	1.4	3	174
Modern Air Transport	9	105	4	23.5	9	40	9	8.9	7	302	2	67.6	10	447	11	448	11	(137)	12	130.58	11	312	8	(38)	9	0.4	9	(197)
Overseas National	5	327	10	4.6	4	6,821	1	94.9	10	36	8	5.0	4	7,184	4	7,967	12	(595)	11	107.47	6	1,963	11	(887)	6	0.8	10	(374)
Purdue Aeronautics 5/																												
Roberts Vance 3/	12	7	1	100.0									12	7	12	7	10	1	2	85.72	12	42	6	41	1	3.0	5	2
Saturn Airways	4	388	3	23.7	8	621	8	38.0	4	627	4	38.3	8	1,636	8	1,675	8	26	9	98.45	7	1,037	7	(35)	10	0.1	11	(650)
Southern Air Transport	3	425	7	11.5	5	3,060	2	82.2	8	236	7	6.3	6	3,721	6	4,229	5	216	4	94.89	5	2,247	5	128	4	1.2	4	108
Standard Airways	10	95	8	6.8	10	21	10	1.5	3	1,277	1	91.7	9	1,393	10	1,407	7	49	5	96.52	9	1,020	4	164	7	0.7	7	(137)
TIA	7	237	9	5.6	6	2,355	7	55.5	2	1,650	3	38.9	5	4,242	5	3,180	6	79	8	98.15	1	6,550	10	(201)	4	1.2	2	279
USOA	11	93	11	0.9	3	7,252	5	66.8	1	3,505	5	32.3	3	10,850	3	10,869	3	309	6	97.16	3	4,109	12	(1,074)	8	0.5	12	(1,268)
World Airways	2	2,335	5	17.2	1	11,123	3	82.1	9	95	10	0.7	2	13,553	2	13,628	1	1,261	3	90.75	2	6,129	1	1,690	3	1.3	1	717
Zantop Air Transport 4/																												

1/ Sources of data: Columns 1, 3, 5, 8, and 9: CAB-BAS Air Carrier Analytical Charts and Summaries for fiscal year 1961. Columns 11 through 14: Analyses of CAB Form 242 for fiscal year 1961.
2/ Two classifications of revenue have been omitted: (a) A miscellaneous column of other transport revenue, (b) A column of non-transport revenue.
3/ Interim operating authority granted 12/17/60.
4/ Carrier inaugurated supplemental operations 6/8/62.
5/ Carrier inaugurated supplemental operations 12/7/61.
6/ Carrier not operating as supplemental during fiscal 1961.

COMPARATIVE ANALYSIS OF THE PERFORMANCE AND GROWTH
OF SUPPLEMENTAL CARRIERS WITHIN THE INDUSTRY
(DOLLARS IN MILLIONS)
(FOR FISCAL YEARS ENDED SEPTEMBER 30)

	Total Industry 1/	Total Certificated Route Carriers 2/	15 Supplemental Carriers Analyzed 2/
Operating Revenue			
1964	4,144	4,041	103
1963	3,668	3,570	98
1962	3,362	3,284	78
1961	2,980	2,918	62
Distribution of Market			
1964	100%	97.5	2.5
1963	100	97.3	2.7
1962	100	97.7	2.3
1961	100	97.9	2.1
Percent of Growth over 1961			
1964	39.1	38.5	66.1
1963	23.1	22.3	58.1
1962	12.8	12.5	25.8
Operating Profits			
1964	363	350	13
1963	171	166	5
1962	49	44	5
1961	(14)	(16)	2
Distribution of Operating Profits			
1964	100%	96.4	3.6
1963	100	97.1	2.9
1962	100	89.8	10.2
1961	100	(100.0)	100.0
Percent of Growth over 1961			
1964	226.3	228.8	550.0
1963	132.1	113.8	150.0
1962	45.0	37.5	150.0

1/ Equal to certificated carriers plus 15 supplementals. For this statistical purpose, the figures excluded amounts related to supplemental drop-outs during the four year period.

2/ Source of amounts: 15 supplemental carriers: Appendix C. Certificated carriers: CAB-BAS, Air Carrier Financial Statistics. Subsidy payments air excluded for this statistical purpose.

APPENDIX D

APPENDIX E

IMPACT OF DOD 30-70 PERCENT RULE ON REVENUE
STRUCTURE OF SUPPLEMENTAL CARRIERS WITH LONG TERM
MILITARY CONTRACTS BASED ON YEAR ENDED SEPTEMBER 30, 1964
(DOLLARS IN THOUSANDS)

1964 Revenue Structure 1/	Total Operating Revenue (1)	Individual Sales (2)	Operating Revenue Less Ind. Sales (3)	Actual Revenue Commercial 2/ (4)	Actual Revenue Military (5)
AAXICO	8,733		8,733	186	8,547
Capitol Airways	17,933	295	17,638	6,501	11,137
Southern	5,736	186	5,550	1,269	4,281
TIA	13,155		13,155	2,268	10,887
World Airways	24,913		24,913	2,751	22,162
Zantop	16,837		16,837	7,808	9,029
Total	87,307	481	86,826	20,783	66,043
AAXICO and Saturn Combined	13,437	21	13,416	3,649	9,767

Based on Commercial Revenue

	30% Commercial Limit Based on Operating Revenue Less Ind. Sales Amount	Short	% Short	Constructive Revenue Based on Commercial Revenue as 30% Total (100%)	Commercial (30%)	Military (70%)	Military Excess Amount	% Excess
AAXICO	2,620	2,434	1,309	620	186	434	8,113	95
Capitol Airways	5,291	(1,210)	(19)	21,670	6,501	15,169	(4,032)	(36)
Southern	1,665	396	31	4,230	1,269	2,961	1,320	31
TIA	3,947	1,679	74	7,560	2,268	5,292	5,595	51
World Airways	7,474	4,723	172	9,170	2,751	6,419	15,743	71
Zantop	5,051	(2,757)	(35)	26,027	7,808	18,219	(9,190)	(102)
Total	26,048	5,265	25	69,277	20,783	48,494	17,549	27
AAXICO and Saturn Combined	4,025	376	10	12,163	3,649	8,514	1,253	13

Based on Military Revenue

	70% Military Limit Based on Operating Revenue Less Ind. Sales Amount	Excess	% Excess	Constructive Revenue Based on Military Revenue as 70% Total (100%)	Military (70%)	Commercial (30%)	Commerical Shortage Amount	% Short
AAXICO	6,113	2,434	28	12,210	8,547	3,663	3,477	1,869
Capitol Airways	12,347	(1,210)	(11)	15,910	11,137	4,773	(1,728)	(27)
Southern	3,885	396	9	6,116	4,281	1,835	566	45
TIA	9,208	1,679	15	15,553	10,887	4,666	2,398	106
World Airways	17,439	4,723	21	31,660	22,162	9,498	6,747	245
Zantop	11,786	(2,757)	(31)	12,899	9,029	3,870	(3,938)	(50)
Total	60,778	5,265	8	94,348	66,043	28,305	7,522	36
AAXICO and Saturn Combined	9,391	376	4	13,953	9,767	4,186	537	15

1/ Source: Actual dollar amounts are those in Appendix C. Others are derived.
2/ Equals column 3 less column 5.

APPENDIX F

RECOMMENDED REGULATION CHANGES

The various regulation changes recommended and the reasons for them are considered in detail in the text (pages 117-136). In general, they contemplate expanding and recodifying Part 208 into Subparts A and B, Subpart A to set forth general provisions applicable to all supplemental air carriers and Subpart B to include the special rules governing particular types of charter authority of the supplementals.[1] The certificates of the supplemental air carriers can be simplified appreciably by incorporating some of the general provisions now found in the interim certificates into Subpart A; and Subpart B should be modeled substantially after Part 295 and the proposed Part 378 concerning all-expense tour charters, with appropriate formal and substantive changes.

Part 207

With all supplemental air transportation subject to the provisions of Part 295 or new Part 208, Part 207 would no longer govern charter flights by the supplementals and should be amended accordingly.

---

[1] Subpart B of the new Part 208 would be applicable to supplemental air transportation other than transatlantic supplemental air transportation. The latter would continue to be subject to the provisions of Part 295 until such time as one set of regulations can be promulgated to govern all supplemental air transportation.

Part 208

Subpart A—This subpart, entitled "General Provisions," should consist of the existing provisions of Part 208 with the following changes, additions, and amendments:

1. *Applicability* (208 3)—amend to delete references to Public Law 87-528. It should be made clear that Subpart A contains the terms, conditions, and limitations of general applicability to all supplemental air transportation, while Subpart B contains the special rules applicable to the various kinds of charter services falling within the scope of supplemental air transportation (except transatlantic supplemental air transportation).

2. *Definitions* (208 3)

(a) amend the existing definition of "supplemental air carrier" to delete references to Public Law 87-528.

10231

(b) incorporate without change from the interim certificates the definitions of "point," "agreement," "cargo agent," "flight," and "ticket agent."

(c) add without change from Part 295 the definitions of "pro rata charter," "single entity charter," "mixed charter," "person," "travel agent," "charter group," "charter organization," "immediate family," and "solicitation of the general public."

(d) add from Part 295 with the changes indicated:

(i) "bona fide members," with deletion of so much of the present provision (section 295.2

(10231)

(k)) as provides "and unless they have actually been members for a minimum period of six months prior to the starting flight date."

(ii) substitute a definition of "supplemental air transportation" for "transatlantic supplemental air transportation" now in Part 295 so as to encompass geographically all interstate, overseas, and foreign supplemental air transportation except transatlantic supplemental air transportation.

(iii) the definition of "charter flight" (section 295.2(b)), changed so as to be applicable generally to persons and property and to

(a) incorporate new provisos (i), (ii), and (iii), and (iv) under section 295.2(b)(1)[2] and

---

[2] The new provisos would read as follows:

(i) by a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel or company property, or in cases of emergency, of commercial traffic);

(ii) by a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons and/or their property, as agent or representative of such group;

(iii) by two or more persons acting jointly for the transportation of themselves and/or their property or a group of persons and/or their property;

(iv) by an indirect air carrier authorized by the Board to charter aircraft from an indirect air carrier.

These provisos are a combination of those now in the interim certificates and the definition in Part 295. Proviso (iv) has been broadened to assure that it encompasses all-expense tour charters by tour operators where authorized by the Board.

(b) amend existing section 295.2(b)(2) to permit split charters (except on charters for property movements or to indirect air carriers) of up to three groups per aircraft provided that each group shall consist of 40 or more passengers.

(e) incorporate without change from proposed Part 378 the definitions of "all-expense tour group," "tour operator," "tour participant," and "tour price."

(f) add from proposed Part 378 with the changes indicated

(i) "all-expense tour charter," amended to have geographical application to interstate, overseas, and foreign air transportation except transatlantic supplemental air transportation.

(ii) "all-expense tour" changed to provide

(1) a minimum tour duration of seven days,

(2) a minimum requirement for two destination cities,

(3) a change in the price provision so that the charge to the passenger shall be no less than 110 percent of the lowest basic fare or fares (provided that the ground elements of the tour shall in no event cost less than $15 per passenger), and

(4) the one-group, one-aircraft rule is modified to provide that where the aircraft

is being operated under one charter to one tour operator a maximum of three groups, each group to consist of 40 or more passengers, may be transported aboard the same aircraft.

(g) add the definition of "substitute service" from Order E-20522, February 28, 1964.

(h) add a new definition of "indirect air carrier" so that the term shall mean any citizen of the United States who engages indirectly in air transportation, including airfreight forwarders and tour operators.

10233

3. Except for minor language changes of an editorial nature, the balance of the present provisions of Part 208 can be adapted in their present form to the new Subpart A, with the following recommended changes:[3]

(a) the addition of the provisions of general application now in the interim certificates concerning written agreements with ticket agents, the use of their certificated names by supplementals, and transfers of control. See *e.g.*, paragraphs (1), (2), and (3) of Part IV of World's interim certificate issued pursuant to Order E-21304, September 21, 1964.

(b) combine sections 295.13 and 295.14(a) and (b) into a new section "Tariffs and Terms of Service" to be included in Part 208 and amended to reflect

[3] The liability insurance requirements recently were amended by ER-441 adopted July 30, 1965 (amendment no. 3 to Part 208).

the liberalization of split charter authority with respect to traditional passenger charters.

(c) combine the requirements of sections 295.14(1) and (2) with those of section 208.20 into a new section for Part 208 entitled "Flight Delays and Substitute Air Transportation," with the amendment noted in (b) above and a separation of the provisions to indicate which apply to interstate and overseas supplemental air transportation, on the one hand, and foreign air transportation, on the other hand.

(d) incorporate into new Subpart A of Part 208 the provisions of present Subpart D of Part 295 (section 295.60) concerning advisory opinions so that they would be generally applicable to all types of charters.

(e) the addition from Part 295 to Subpart A of the provisions concerning waivers (section 295.3), separability (section 295.4), and records and record retention (section 295.5), with any necessary changes to reflect the prior approval procedure applicable to all-expense tour charters.

(f) combine as a single provision entitled "Payments, Gratuities, and Donations" in new Subpart A the present sections 295.16 and 295.21 and amend them so as to prohibit specifically donations to charter organizations and individual charter participants.

(g) delete section 208.30 from Subpart A for inclusion in Subpart B.[4]

Subpart B. This subpart, entitled "Charter Services," would set forth the special rules applicable to the various kinds of charters falling within the classification of supplemental air transportation, *i.e.*, military charters, pro rata charters, single entity charters, mixed charters, and all-expense tour charters. As the result of the changes previously recommended some of the provisions now appearing under the various headings of Part 295 would be removed to Subpart A of Part 208 because of their general application to all charter services. Also, most provisions of Part 295 subsequently suggested for incorporation in Subpart B need editorial changes to correct intra-paragraph references from sections of Part 295 to the applicable new provisions of Part 208, to eliminate references to transatlantic supplemental air transportation, etc., and changes of this nature will not be specifically discussed.

Military Charters. This heading would include only the present section 208.30 with the deletion of references to Public Law 87-528 and an amendment to incorporate the provisions concerning "substitute service" placed in the interim certificates of the supplementals by Order E-20522, February 28, 1964.

---

[4] The Bureau has also suggested that Part 208 should include provisions concerning continuing fitness and modifications, suspension, or revocation of certificates, substantially in the form that these matters are dealt with in the statute and in the interim certificates of the supplementals. However, as the result of this proceeding the supplementals will be operating under the Act rather than Public Law 87-528, and provisions that do no more than parrot the statutory language are superfluous.

Pro Rata Charters. Remaining provisions of Part 295 for incorporation under this heading are sections 11, 12, and 15 (requirements relating to air carriers), 20 and 22 (requirements relating to travel agents), and 30 to 36 inclusive (requirements relating to the chartering organization). The following changes and amendments are indicated:

1. sections 295.30 and 295.31 should be amended to make it clear that solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer.

2. eliminate in section 295.35(b)(1), and in the note following section 295.35(d), the references to the six months' rule.

10235

Single Entity Charters. As appears in the present sections 39-42 of Part 295, there should be appropriate references back to prior provisions as well as retention of the requirement concerning commissions paid to travel agents (295.42).

Mixed Charters. The rules governing pro rata charters would be applicable to mixed charters, as is now the case in Part 295 (295.50).

All-Expense Tour Charters. Regulations pertaining to all-expense tour charters would be predicated on the general requirements in proposed Part 378, subject to its change from a blanket exemption regulation to one that specifies a pre-flight authorization procedure. The following changes are suggested:

(10235)

1. A provision requiring the filing of a joint application by the carrier and the tour operator for a Statement of Authorization and any necessary exemption for the tour operator authorizing the specific tour charter flight or series of flights proposed. No flights could be operated in the absence of such authorizations.

2. The application should include such information as may be required concerning the carrier, the tour operator, the tour charter arrangements and destinations, the dates of operation, equipment, price, etc. The application should (1) attach a tour prospectus for the proposed operations, (2) be filed by a prescribed date sufficiently in advance of the scheduled flight dates to allow for answers to the applications and for orderly processing, and (3) contain a showing that the carrier and the tour operator meet the general requirements of the regulation.

3. If the Board should find that the proposed flight or flights comply with the requirements of the regulation and are otherwise in the public interest, a Statement of Authorization and any necessary exemption would be issued. Any such authorizations could be withheld, conditioned, or limited by the Board as the public interest might require.

4. The conditions and limitations of proposed Part 378 would form the basis of the general requirements that all applicants would be required to meet, specifically: the requirement of a binding charter commitment (378.10); the provision for filing of a tour prospectus (378.11), modified to require that it be filed with the application; adherence to the tour prospectus (378.12) and the provisions of the Statement of Authorization and any ex-

emption issued; provisions for tariffs (378.13) and waivers (378.30) to the extent that the general provisions

10236

previously recommended for inclusion in Subpart A do not suffice; surety bonds (378.14); contracts by the tour operators and tour participants (378.15); post flight reporting (378.20) if deemed necessary with the change to a prior approval procedure; and enforcement (378.31). Also, the Board should reserve the rights to suspend a tour operator's exemption authority where necessary for protection of the public (378.6(b)).

Part 295

Part 295 should be amended to reflect the substantive changes made herein.

(10269)

10269

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

EXCEPTIONS OF

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc.

TO

EXAMINER'S INITIAL DECISION

Communications with respect to these Exceptions should be sent to:

POGUE & NEAL
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

September 7, 1965

10270

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

EXCEPTIONS OF

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc.

TO

EXAMINER'S INITIAL DECISION

The Initial Decision of Examiner Robert L. Park was served in the above-captioned proceeding on August 27, 1965. The Trunkline Intervenors, in accordance with the provisions of Rule 30 of the Board's Rules of Practice, file the following exceptions to the ultimate conclusions of said decision:

1. Exception is taken to the finding of the Examiner that the Board has the statutory authority under the Federal Aviation Act of 1958, as amended, to authorize supplemental air carriers to provide all-expense tour charters to tour operators. All-expense tour charters are not "charter trips in air transportation"; do not "supplement" the

scheduled service of scheduled carriers; and may not be authorized on the basis of a record devoid of evidence as

10271

to how, when, or where they will be performed, presented by travel agents as the real principals in such a service, and necessary for required statutory findings under Section 102(b) and (d) of the Act.

2. Exception is taken to the finding of the Examiner that the public convenience and necessity requires the authorization of supplemental air carriers to provide all-expense tour charters to tour operators.

3. Exception is taken to the finding of the Examiner that the public convenience and necessity requires the authorization of supplemental air carriers to provide split charters.

4. Exception is taken to the finding of the Examiner that the public convenience and necessity requires the authorization of any supplemental air transportation other than within the continental United States and to transborder points.

5. Exception is taken to the finding of the Examiner that the applicants for whom he has recommended certification to provide supplemental air transportation other than within the Continental United States and to transborder points, are fit, willing, and able to provide such service.

6. Exception is taken in the following respects to the finding of the Examiner that the public interest requires the Economic Regulations governing the regulation of planeload charters to be revised, supplemented and reissued in accordance with recommendations set forth in

Appendix F to his Decision: (a) the failure of the Examiner to include provisions therein prohibiting all of the objectional practices contained in the letter of J. G. Adams, then Director, Bureau of Enforcement, December 11, 1964, introduced in the record as JI-1158; (b) the recommended elimination of the six months membership rule; (c) the recommended provision for split charters; (d) the recommended provision for charters to freight forwarders.

10272

7. Exception is taken to the finding of the Examiner that the Economic Regulations should be revised, supplemented, and reissued in accordance with recommendations set forth in Appendix F to his Decision by the adoption of a modified Part 378 of the Board's Regulations proposed in Docket 15777 and relating to all expense tour charters by supplemental air carriers and tour operators, as a "... temporary expedient to permit prompt implementation of the new authority recommended." (RD 119) Reliance on any part of that Docket, not consolidated herein nor subject to cross-examination by the Intervenors, either to decide the need for, or regulations surrounding, any all expense tour charter experiment, constitutes a violation of the Administrative Procedure Act, particularly Section 7(d) thereof; is arbitrary, capricious, and an abuse of discretion; and deprives the Intervenors of due process under the Fifth Amendment of the Constitution of the United States. Further, and assuming *arguendo* the validity of such reliance, the Examiner's recommended all expense tour charter recommendations are inadequate to prevent a service substantially identical to individually ticketed service and to minimize diversion from the Intervenors, particularly

with respect to the provisions for the duration and stop requirements to be imposed, the number of groups that could be transported on a single aircraft, the price to be charged the passenger, and the provision for "waivers".

10273

The Trunkline Intervenors will file a brief in support of the above exceptions. Oral Argument is requested.

Respectfully submitted,

POGUE & NEAL

By: /s/ JAMES F. BELL
Attorneys for
American Airlines, Inc.
Braniff Airways, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
National Airlines, Inc.
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.

September 7, 1965

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served this date upon all parties to this proceeding as required by the Board's rules.

/s/ BRIAN C. ELMER
Brian C. Elmer

September 7, 1965

10878

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket No. 13795, *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

BRIEF TO THE BOARD OF THE JOINT INTERVENORS:

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

POGUE & NEAL

1001 Connecticut Avenue, N.W.

Washington, D. C. 20036

September 27, 1965

(10879)

10879

INDEX

Page

INTRODUCTION 1

I. ALL APPLICATIONS OF SUPPLEMENTAL AIR CARRIERS TO PROVIDE ALL EXPENSE TOUR CHARTERS TO TRAVEL AGENTS SHOULD BE DENIED. 4

A. All-expense Tour Charters Are Unlawful. 4

1. "Charters" by supplementals to travel agents who sell individual space to the general public as part of an all-expense tour, are not valid "charter trips in air transportation" under Section 101(33) of the Act. 4

a. Any air service wherein individual space is sold to the general public violates the standards for a valid "charter" established by the Court of Appeals for the District of Columbia in the recent *American* case. 4

b. The legislative history of P. L. 87-528 demonstrates a specific Congressional intent to withhold any authority from the supplementals permitting all-expense tour charters to travel agents. 7

Page

2. "Charters" by supplementals to travel agents who, in turn, simply sell to the public at large the same type of all-expense tours presently offered and vigorously promoted by both travel agents and scheduled carriers, are not "supplemental air transportation" under Section 101(33) of the Act. 10

3. No all-expense tour charter program may be authorized on the basis of a record utterly devoid of evidence as to how, when, and where the travel agent, as the principal in such a program, will offer and perform this service. 14

i

10880

B. The Supplementals' Case For All Expense Tour Charters Is Predicated Upon A Series Of Completely Unsupportable Myths. 19

1. *Myth*: All expense tour charters will bring new and startling public service benefits which have never before been available to the public. 19

2. *Myth*: All expense tour charters will generate an entirely new class of air traveler which has previously been "grounded". 20

3. *Myth*: All-expense tour charters will not divert from scheduled services but, *mirabile dictu*, will help them. 21

Page

4. *Myth*: The scheduled carriers are so affluent that a "little diversion" will not hurt. . . 25

5. *Myth*: All-expense tour charters can be suitably "restricted" so as to "reasonably" limit diversion from scheduled carriers. 27

6. *Myth*: The British inclusive tour experience to the Costa Brava and Costa del Sol has been so successful, and is so analogous to the American flag regulatory system, that it should be transported over here forthwith. 30

7. *Myth*: All-expense tour charters will help the U. S. balance of payments problem by, for example, bringing more Jamaicans to America to spend pounds here, than Americans to Jamaica to spend dollars there. 33

8. *Myth*: Year-round certification of all expense tour charter authority is still required to meet limited period seasonal peakings, in spite of the limited period Special Operating Authorizations permitted under Section 417 of the Act. 33

10881

9. *Myth*: The supplementals, the bulk of whom have returns on investment which would be the envy of most certificated air carriers, are "marginally profitable" and need "strengthening". 34

Page

10. *Myth*: The supplementals "need" all-expense tour charter authority to meet the 30% DOD rule on commercial revenues, and the Board has an obligation to generate new, and exclusive, areas of business for them. 36

11. *Myth*: Domestic planeload charter business is insufficient, along with military charters, to permit 11 supplementals from an industry once comprising 105 carriers to continue as profitable enterprises. 38

C. The fact is that the institution of all-expense tour charters to travel agents will be one of the most detrimental developments ever to be devised in the history of air transportation. 39

II. THE EXAMINER'S RECOMMENDED CERTIFICATION OF CERTAIN CARRIERS TO PROVIDE CIVIL PLANELOAD CHARTERS OTHER THAN WITHIN THE CONTINENTAL UNITED STATES AND TO TRANSBORDER POINTS MUST BE REJECTED AS A MATTER OF LAW. 42

A. The Examiner Has Completely Misconceived The Standards Of Certification Under Section 401(d)(3) Of The Act. 43

1. Fitness 43

2. Public Need 45

Page

B. The Examiner's Ultimate Findings Of Public Need Are Either Not Supported By His Own Subsidiary Findings Or Are Supported By Subsidiary Findings With A Defective Evidentiary Or Legal Base. 46

iii

10882

1. Cargo charters 46

2. Passenger charters—Caribbean, Central American and South American areas 47

3. Passenger charters—Transpacific 48

4. Passenger charters—Alaska 48

5. Passenger charters—Hawaii, Puerto Rico 49

III. OTHER ISSUES 49

A. Regulatory Provisions 49

B. Split Charters 49

C. Unqualified Applicants 50

CERTIFICATE OF SERVICE

iv

11275

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795, *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ANSWER OF JOINT INTERVENORS TO MOTION OF OVERSEAS NATIONAL AIRWAYS, INC. TO REOPEN THE RECORD AND FOR OTHER RELIEF

Now come the Joint Intervenors[1] to answer, and oppose, the motion of Overseas National Airways, Inc. (ONA) to reopen the record in the above-captioned proceeding or, alternatively, for certain other specified relief. In support whereof, the Joint Intervenors respectfully submit the following:

1. *Motion to reopen the record.* ONA asks the Board for permission to reopen the record in this proceeding in order to receive new evidence of ONA's fitness presented in the *Reopened Transatlantic Charter Investigation*, Docket 11908, *et al.* ONA asserts that the reopened hear-

---

[1] American Airlines, Inc., Braniff International, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

ing necessary to consider these matters would be "limited" and "should evoke little cross-examination".

• • • • •

11277

2. *Motion to take official notice.* ONA has requested the Board to take official notice of a selected group of Form 41 filings, a certain lease agreement, "and/or (iii) evidence of ONA's fitness presented in the *Reopened Transatlantic Charter Investigation,* Docket 11908, *et al.* . . .". *This* request suffers from the same disability as the request to reopen the record, and is clearly violative of the Board's Rules of Practice. The latter two items are not documents subject to "official notice" under Rule 24(m)(1), and therefore, are subject to Rule 24(j) requiring consent of the parties before they can be considered a part of the record. Whereas Form 41 Reports are listed in Rule 24(m)(1), official notice for the purposes sought by ONA is clearly inappropriate in accordance with Rule 24(m)(2) and Section 7(d) of the Administrative Procedure Act, 5 U. S. C. 1006(d).

In essence, ONA's request for "official notice" is simply a request for consideration by the Board of the fitness evidence submitted by ONA in Docket 11908. Nine of the eleven Joint Intervenors, and their counsel, did *not* participate in that proceeding. It is, therefore, difficult to understand ONA's claim that "no party to this proceeding could show that the use of such evidence would result in substantial prejudice". It would be patent legal error for the Board to rely upon evidence in *another* proceeding to which intervenors in this case were *not* parties and upon which they did not have the opportunity to cross examine.

• • • • •

(11359, 11445)

11359

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket Nos. 11908, *et al.*, and 13795, *et al.*

In the Matter of:

REOPENED TRANSATLANTIC CHARTER INVESTIGATION AND SUPPLEMENTAL AIR SERVICE PROCEEDING

ORAL ARGUMENT

Volume 1 — Place Washington, D. C.

Pages 1 thru 180 — Date October 13, 1965

11445

* * * * *

VICE CHAIRMAN MURPHY: Mr. Bell?

ARGUMENT OF JAMES BELL, ON BEHALF OF OPPONENTS

MR. BELL: May it please the Board, Mr. Chairman, as you know I am representing the eleven joint line trunk intervenors in this proceeding, and in the interest of a unified presentation, however, most of the other intervenors have conceded their time to me. So that I will in effect, with one other exception, be in the supplemental case the opponent of the all-expense tour charter concept.

* * * * *

(11446, 11500, 11501)

11446

* * * * *

MR. BELL: * * * And this time the question is whether the supplemental should be permitted to charter aircraft to tour operators who in turn would sell individually ticketed service directly to the general public as part of an all-expense tour.

* * * * *

11500

* * * * *

MR. BELL: * * * Gentlemen, the all expense tour charter program is superficially very appealing, I agree. It appears to do something for everybody. But when it is dissected in the light of history, it proves to be one of the most disastrous programs ever advanced in the history of air transportation. It is unlawful, it is contrary to the public interest, it is unneeded, it is detrimental to the development of air transportation, it is administratively unenforceable, and it is supported by ephemeral arguments which fade away in the light of fact.

Are there any questions, sir?

VICE CHAIRMAN MURPHY: No. We thank you very much, Mr. Bell.

* * * * *

11501

* * * * *

ARGUMENT OF JERRY W. RYAN ON BEHALF OF PAN AMERICAN WORLD AIRWAYS SYSTEM

MR. RYAN: Mr. Chairman, Members of the Board, there has been today considerable difficulty in your knowing or

counsel knowing to which case comments have been directed insofar as the applicants are concerned. I think it is well nigh impossible to sort out which of those comments belong to which case.

I would like to try to avoid that by saying that Mr. Bell has commented primarily on the problems in the Supplemental Air Service Case. Although I would also say that his legal arguments as to the power of this Board to authorize all-expense tour charters obviously apply in the Transatlantic Case as well as the Supplemental Case, and I will not burden you further with remarks to that subject.

* * * * *

11503

* * * * * *

MR. RYAN: * * * First, I would discuss the Docket 11908 procedural questions raised by Board Order E-22686.

As you know, both Pan American and Trans World Airlines have a most substantial interest in that docket because the Transatlantic is a prime market for both of those carriers. Both of them, Pan American and TWA, have participated in every phase of that case.

I would say that counsel for TWA is not arguing before you today only because of the limited time available and since the interests of it and Pan American are essentially identical it seemed appropriate for one person rather than two to argue the matter here. I say this so you will understand that both carriers have the deepest interest in that matter now before the Board.

In my use of the phrase "now before the Board" it is not a concession to what some of the parties suggest is in fact before you. Preliminarily I would point out that cer-

tain briefs filed for this occasion purport to present to you evidence extractive from the Supplemental Case for your use in deciding the All-Expense Tour Case in the Transatlantic area.

That was not your order. We are rather to argue whether such a procedure would be permissible and reasonable before the Board.

11504

In the first proceeding, in the first phase of this case, the Board affirmed the Examiner's recommendation denying applications for authority to charter the travel agents for the operation of all-expense tours. And the denial like the grant of the split-charter authority is not contained physically within the piece of paper called the certificate. Rather it is contained in the Board's newly revised Part 295 which, along with the certificates and the Board's opinion dealing with the entire case, went to the President. The President returned the Board's opinion endorsing it as approved.

Thereupon the Board announced the President had acted on all aspects of the Board's decision save the ONA application and its financial fitness and thus in issuing its decision the Board said:

> "The only matter remaining to be disposed of is the importance of the President's directive returning the proceeding to the Board for further evaluation as to ONA."

The Board at the time of its decision was not alone in that belief. Petitions for reconsideration were addressed

to the denial of all-expense tour authority by both Saturn and Capitol, for example, and those carriers by their petitions sought a change in the Board's decision.

Today I think they have affirmed in their documents the same view, that there is a decision to be reconsidered in the Transatlantic Case and not unfinished business yet

11505

to be decided for the first time.

Suddenly, then, on April 30, 1964, the Board issued another Order E-20776, which I think surprised all of the parties. There, for the first time, it said that the President had not taken final action on the Board's recommendation not to grant any applicant all-expense tour authority.

This after-thought order seems to make no more sense now.

As the Board is aware, judicial review of split-charter grant was sought and obtained.

Counsel for the Board there in the Court of Appeals argued and argued successfully that the President had in fact approved the definition of charter contained only in 295, and the Court agreed saying:

> "We have considered the contention that the President has not actually approved the split-charter concept, and we find it without merit."

This position and the after-thought position of the Board that the President did not act on the all-expense tour issue are logically irreconcilable. The President neither said,

(11505, 11506)

"I approve Part 295," or "I disapprove Part 295 of any part of it in any specific language."

The finding of approval of split charters can only rest on what was in fact Presidential silence and the impossible position of the Board must be that the President by

11506

silence affirmatively acted on the split-charter issue and that simultaneously the President withheld action by the same silence on another aspect of the same piece of paper before it.

Rather than belabor that point, I would suggest there is available a very simple course of action. The Board is entitled to and the Board should ask the President what in fact he did intend. A simple exchange of correspondence will resolve that matter and we would then clear up this procedural cloud as to whether there is in fact a final decision and whether or not the President did in fact act.

So where does the Board now stand? It has before it petitions for reconsideration requesting that the Board change its mind and reach a conclusion from that originally adopted by the President or different from the view already approved by him.

This brings me to the first of the questions raised by the Board for comment at this time: Is the present record adequate for determining the all-expense tour issue in Docket 11908, and I mean the record in Docket 11908?

The present record certainly was adequate for the Board when it determined the all-expense tour issue in its decision approved by the President and presumably as a mat-

ter of power the Board is entitled to act now on the petitions and the answers thereto, to review its decisions and act again on the question.

* * * * *

11666

ARGUMENT OF JAMES BELL ON BEHALF OF TRUNKLINE CARRIERS

* * * * *

MR. BELL: * * * Charter service is not the primary function of the domestic trunkline carriers. That primary function is to provide scheduled air transportation, and the trunklines therefore accepted the 1962 delineation of the supplemental air carriers as charter specialists designed to supplement the scheduled service provided by the trunkline carriers.

* * * * *

(11734)

11734

E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

Decided: March 11, 1966

Certificates issued to American Flyers Airline Corp., Capitol Airways, Johnson Flying Service, Modern Air Transport, Purdue Aeronautics Corp., Saturn Airways, Southern Air Transport, Trans International Airlines, World Airways, and Zantop Air Transport authorizing civil and military charters of persons and property between the 50 States of the United States and the District of Columbia, subject to certain conditions.

Decision deferred as to applications of Overseas National Airlines, Standard Airways, and Vance International Airways for further hearing on qualifications.

New Part 378 of the Special Regulations, which grants indirect air carrier authority to tour operators and sets forth the provisions governing the conduct of inclusive tour charters by the tour operators and the supplemental air carriers, being concurrently adopted and issued by the Board.

Part 208 of the Economic Regulations revised and reissued so as to incorporate therein new definition of charter

flight to allow the engagement by the chartering organization of one-third capacity of an aircraft for the movement of passengers on a time, mileage, or trip basis and to set forth therein terms, conditions, and limitations governing the operations of the supplemental air carriers being issued certificates under section 401(d)(3) of the Act.

Except for inclusive tour charters, which are authorized for a five-year period, certificates are being issued for an indefinite period.

11735

Decision as to all applicants with respect to overseas and foreign aspects of supplemental air transportation withheld until action under section 801 of the Act.

APPEARANCES:

Same as in examiner's decision and, in addition, the following:

Berl I. Bernhard for Allegheny Airlines, Bonanza Air Lines, Hawaiian Air Lines, Lake Central Airlines, Ozark Air Lines, Pacific Airlines, Piedmont Aviation, Southern Airways, and Trans-Texas Airways.

Richard D. Neumann for Holiday Airways.

Howard Boros for Overseas National Airways.

R. P. Smith for Purdue Aeronautics Corporation.

Judah Best and *Martin L. Friedman* for United States Overseas Airlines.

11736

OPINION

BY THE BOARD:

This is a consolidated proceeding on the applications of seventeen applicants seeking certificates of public convenience and necessity under section 401(d)(3) of the Act to engage in supplemental air transportation.[1]

The applications consolidated and heard in the proceeding request authority to operate both domestically and in the overseas and foreign fields. This opinion deals only with the domestic issues. Under the provisions of section 801 of the Act, our disposition of the requests for overseas and foreign authority is subject to the approval of the President and will therefore be the subject of a separate opinion.

Following public hearings, Examiner Robert L. Park issued his recommended decision. On the domestic issues, the examiner found that (1) all qualified applicants should be issued certificates authorizing them to operate civil and military charters with respect to persons and property between the fifty states; (2) the authority should include the right to provide split charters and inclusive tour charters,[2]

---

[1] American Flyers Airline Corp., Capitol Airways, Inc., Conner Air Lines, Inc., Holiday Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Overseas National Airways, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Southern Air Transport, Inc., Standard Airways, Inc., Stewart Air Service, Trans International Airlines, Inc., United States Overseas Airlines, Inc., Vance International Airways, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

[2] Although the applicants and the examiner generally used the term "all expense tour" charter, we think the term "inclusive tour" charter is more descriptive of the service, and will so designate it.

in addition to charters as traditionally defined; (3) the inclusive tour authority should be of five years' duration and remaining authority of unlimited duration; (4) eleven of the applicants are fit, willing, and able[3] and six are not fit, willing, and able;[4] (5) appropriate regulations should be adopted to implement the authority being granted and prescribe the limitations thereon.

Exceptions and briefs to the Board have been filed,[5] and the Board has heard oral argument.

Upon consideration of the entire record, we find that we are in agreement with the examiner's disposition of the domestic issues with but one significant exception. We have decided that rather than finally dispose of the applications of ONA, Standard, and Vance, we should reopen the record for further hearings before the examiner on the current qualifications of the three applicants. Accordingly, except as modified herein, we adopt as our own the findings, conclusions, and recommendations of the examiner on the domestic issues contained in his decision which is attached hereto as an appendix.[6]

---

[3] American Flyers, Capitol, Johnson, Modern, Purdue, Saturn, Southern, TIA, Vance, World and Zantop.

[4] Conner, Holiday, ONA, Standard, Stewart, and USOA.

[5] Exceptions and briefs were filed by American Flyers, Capitol, Conner, Holiday, Johnson, Modern, ONA, Purdue, Saturn, Southern, Standard, Stewart, TIA, Vance, World, Zantop, The Flying Tiger Line, Lake Central Airlines, Local and Short-haul Carriers, Mackey Airlines, Pan American-Grace Airways (Panagra), Trans Caribbean Airways, and the Trunkline intervenors.

[6] The examiner issued a single decision covering both the domestic issues and the overseas and foreign issues. For convenience, we are attaching the examiner's decision in its entirety. We obviously do not here adopt the portions of the decision directed to matters that are subject to the approval of the President.

(11737, 11738, 11739)

Since the examiner in his thorough and carefully considered recommended decision dealt fully with the issues in the case, we will limit our opinion to certain matters raised on exceptions and our reasons for the limited reopening.

11738

Inclusive Tour Charters

A major issue in the proceeding involves the question of inclusive tour charters. These are charters to tour operators selling packaged tours to individual members of the public. As already indicated, the examiner found that such tour charters could be lawfully authorized by the Board and would meet a substantial public need for low-cost pleasure air travel. He further found that the tour authorization would economically strengthen the supplemental carriers without having a materially adverse effect on the certificated route carriers. Accordingly, he recommended the grant of such authority for a five-year period, subject, however, to a set of comprehensive regulatory provisions designed to assure that the tours would be limited to group travel, rather than individually ticketed point-to-point transportation.

We are in full agreement with these findings and conclusions and find, in the main, there is no necessity to explore them further. However, several exceptions warrant comment.

11739

Legal Issues. Under the definition of supplemental air transportation in section 101(33) of the Act, we may authorize supplemental air carriers to engage solely in "char-

ter trips." The argument is made that the term "charter trip" does not include charters to tour operators acting as indirect air carriers for the purpose of transporting inclusive tour groups whose members are gathered from the general public, and that charters would be mere subterfuges for individually ticketed transportation. The argument is based primarily on the claim that, while the statute does not spell out a prohibition against inclusive tour charters, its legislative history expresses such an intention. The examiner correctly rejected this argument.

In our view, the statute on its face clearly leaves to the Board's exercise of its sound discretion the power to define the term "charter" so long as we preserve the basic distinction between group travel and individually ticketed travel. This principle was established in the *Transatlantic Charter Investigation,* Docket 11908, and we are persuaded that it governs this case as well.

In the *Transatlantic* case the Board, for the first time, authorized supplemental carriers to charter space to two groups on one aircraft.[7] This split-chartering was attacked by the certificated route carriers on the ground that the legislative history of P. L. 87-528, the Supplemental Air Carrier Act, demonstrated that Congress intended that the word "charter," as used therein, should not be expanded beyond its traditional scope. The court decisively rejected this argument, stating:

11740

"We are unable to conclude that the term 'charter trips' has a fixed meaning . . . . We conclude Congress in-

[7] Orders E-20530, 20531, issued March 3, 1964.

> tended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs . . . . We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." [8]

Moreover, the element of novelty, which was present in split charters, is absent here. Inclusive tour charters are well established in surface transportation, and their legality has long since been settled, as against contentions that they are mere subterfuges for individually ticketed transportation. The question arose in the leading case of *Tauck Tours*, and involved the issue of whether the Interstate Commerce Commission had the power to issue a broker's license to a travel agency authorizing the travel agent to charter buses from motor carriers licensed to engage only in charter services. In its first report of the case, Division 5 of the Commission limited the broker's authority to sell individual all-expense tours to the use of motor carriers authorized to perform services on an individual-ticket basis and at individual-ticket rates, on the ground that the proposed services were not bona fide charters.[9] On reconsideration, however, Division 5 concluded that the charters were lawful. It recognized that a motor carrier whose authority

---

[8] *American Airlines, Inc., et al.* v. *C. A. B.*, 348 F. 2nd 349, 354 (C. A. D. C., 1965).

[9] *Tauck Tours, Inc., Extension—New York, N. Y.*, 49 M. C. C. 491 (1949).

was limited to charter services could not perform individually ticketed services "through the subterfuge of a broker

11741

selling tickets to a number of persons who purchase individual transportation between two points." [10] Such a group would not constitute a bona fide charter party since "there does not exist any community of interest among these persons other than a desire for transportation between identical points." [11] However, a group of individuals participating in an all-expense tour venture

> "have more than just a mere desire to travel between the same points. They are participants in a group which will maintain its identity for some predetermined period of time, be under the direction of a guide, and enjoy substantially identical accommodations and experiences. Upon further consideration we are convinced that individuals by agreeing to become group members for the sake of group advantages, achieve a degree of cohesiveness such that, even though the group was organized by applicant, it is entitled through applicant as its agent to deal with the carriers as a group and to buy charter service for the group from the carriers . . . ." [12]

Division 5's report was affirmed by the full Commission applying substantially the same reasoning.

---

[10] 52 M. C. C. 373, 376 (1951).

[11] *Ibid.*

[12] *Ibid.*

A three-judge Federal District Court affirmed the Commission's conclusion. In the court's view "a good deal more than bare individual transportation is involved. The tour is attractive because it is a group adventure . . . . The important thing is that the Tauck group is a cohesive whole interested in a tour for pleasure, and not in mere trans-

portation."[13] This conclusion was affirmed by the U. S. Supreme Court.[14]

Thus, inclusive tour charters are supported by precedent and practice in the field of surface transportation. It is true that the Board has not hitherto authorized inclusive tour charters in air transportation, but our determinations not to do so have been clearly based on policy rather than legal grounds. On the other hand, the Board has not required "affinity" of a group before it may itself apply for charter transportation.[15] And, in the cargo field, it has allowed freight forwarders to charter aircraft for transportation of consolidated cargo, against the claim of some parties that this policy was inconsistent with the Board's policy of prohibiting agent-assembled passenger charters.[16]

---

[13] *National Bus Traffic Assn.* v. *United States,* 143 F. Supp. 689, 696-7 (D. C. N. J., 1956). It is true that the court relied in part on the fact that all-expense tour charters were long established in the motor carrier field and upon the absence of any legislative history evidencing an intention to prohibit them. However, we agree with the examiner's reading of the decision that these factors were not decisive considerations.

[14] 352 U. S. 1020 (1957).

[15] See, for example, *Pan Am. World Airways, et al., IATA Agreements,* 23 C. A. B. 275, 280-281 (1956); *IATA Agreements, Group Excursion Fares,* 26 C. A. B. 755, 756 (1958).

[16] *International Airfreight Forwarder Investigation,* 27 C. A. B. 658, 668-669 (1958).

But it is argued that all of the foregoing is overridden by legislative history. It is suggested that because the Senate bill specifically authorized inclusive tours, whereas the version ultimately enacted was silent on the matter, Congress intended to prohibit such tours. On the contrary, this sequence of events simply demonstrates that Congress intended not to freeze the definition, but to leave the question open for the Board to determine as a regulatory mat-

ter. This conclusion is reinforced by a closer analysis of the legislative history.

During the hearings on the bills, there was a great deal of testimony relating to the Board's regulations defining charters as restricted to "homogeneous" groups.[17] The supplementals felt that the term "charter" should be defined so as to compel the Board to liberalize its regulations and allow them to carry inclusive tours as charters. S. 1969, as reported to the Senate on August 8, 1961, defined charters so as to include specifically a charter to a person who offers all-expense tours to the public.[18] The Senate Commerce

---

[17] Hearings before Subcommittee of Commerce Committee on H. R. 7318, H. R. 7512, and H. R. 7679, 87th Cong., 1st Sess. 80, 189, 231 (June 20, 21, and 23, 1961). Hearings before Aviation Subcommittee of Commerce Committee on S. 1969, 87th Cong., 1st Sess. 54, 61, 98-99, 110-111, 132, 136, 143, 151, 156, 179, 186, 267 (June 26, 29, and 30, 1961).

[18] The bill contained the following definition: "'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrange-

Committee Report supporting this definition explained that "because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter," the term should be defined in the statute.[19]

11744

Unlike the Senate bill, the bill passed by the House limited supplementals' certificates to "charter trips" and did not define the term (H. R. 7318, as amended, September 13, 1961). The House Committee preferred to leave the definition of charter to the Board. Its report stated:

> "The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.
>
> "Your committee, however, after considering the problem, came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." [20]

---

ment with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense paid tour."

[19] S. Rep. No. 688 (Calendar No. 664), 87th Cong., 1st Sess. 13 (Aug. 8, 1961).

[20] H. Rep. No. 1177, 87th Cong., 1st Sess. 11 (Sept. 13, 1961).

The bill as reported by the Conference Committee and as enacted followed the House version and eliminated the definition of "charter service."

In short, the Senate version of the bill as well as the Senate Committee Report make clear that the Senate was dissatisfied with the Board's historic refusal to authorize inclusive tour charters. On the other hand, the House bill contained no reference one way or the other to all-expense tours, and the House Committee Report clearly indicates that this matter was to be left to the Board to determine. The ultimate adoption of the House version strongly supports a construction of the statute in line with the House Committee Report.

Thus, the clear meaning of the statute is reinforced by

the sequence of events in the Senate and the House and the authoritative Committee Reports explaining those events. Under these circumstances, there is no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers. This is not a situation where resort to floor debates is required to explain ambiguities in the action taken by Congress. In any event, the remarks made on the floor fall far short of a clear consensus.[21]

---

[21] Only two members of Congress, both Senators, expressed anything approaching an unequivocal statement that the Board would lack legal power to authorize inclusive tour charters (Senator Scott, 108 Cong. Rec. 12284-5; and Senator Cotton, 108 Cong. Rec. 12284). Three other members of Congress, including the Chairmen of the relevant House Committee and Subcommittee, while stating opposition to the grant of inclusive tour authority by the Board, expressed no opinion as to the Board's legal authority under the bill to do so (Senator Thurmond, 108 Cong. Rec. 12285;

(11745, 11746)

Considering all of the foregoing, we are persuaded that we have the power to authorize inclusive tour charters as "charter trips" under section 101(33) provided that we preserve the basic distinction between group and individual travel.

11746

The route carriers further argue that even if inclusive tours were "charters" within the meaning of section 101 (33) of the Act, they still could not be authorized because of the provision of that section which requires that supplemental air carrier certificates be granted "to supplement the scheduled service authorized by certificates" issued to the route carriers under sections 401(d)(1) and (2). It is contended that inclusive tours do not "supplement" scheduled services that are now available on the scheduled carriers. We find this argument unpersuasive. Price is clearly not the sole distinguishing factor of inclusive tour charters. The use of the charter mechanism, combined with the restrictions which we are imposing by regulation, necessarily results in a service to the public which is different in significant respects from that available on scheduled services. In exchange for realizing the price savings accruing from the economies of planeload charter operations, the charter tour passenger is subjected to the rigidities of a group itinerary, must be willing to travel and share facilities with

---

Representative Harris, 108 Cong. Rec. 12322; and Representative Williams, 108 Cong. Rec. 12322). Finally, Senator Monroney, the Chairman of the Aviation Subcommittee of the Senate Interstate and Foreign Commerce Committee, while not specifically addressing himself to inclusive tours, flatly stated that the matter of the definition of charter was to be left to the Board's discretion (108 Cong. Rec. 12283).

strangers, and must agree to the necessary regimentation that is entailed in group travel. Nor will he have the freedom to select from the multiple daily schedules offered by route carriers, but will be confined to predetermined departure and arrival times selected by the tour operator.[22]

11747

Moreover, it is clear that the specially tailored type of service to be provided is not one which could practicably be furnished by route carriers on their scheduled operations. Finally, as the examiner found, inclusive tour charters are directed at, and will generally attract, a class of traveler to air transportation not now using scheduled services. For all these reasons, we find that, no less than in the case of traditional planeload charters, inclusive tour charters are "supplemental" within the meaning of section 101(33).

We also reject the contention of the route carriers that the tours are in fact "special services" as that term is used in section 401(e)(6) of the Act and therefore beyond supplemental authority. "Charter services," including the proposed inclusive tours, involve the transportation of groups assembled by a person other than the carrier, whereas the term "special services" related to groups as-

---

[22] It is argued that tour operators could in fact operate on daily schedules. However, while this is technically possible, it does not appear that operation of scheduled tour charters at high frequency levels would be economically feasible, and we do not anticipate them. High frequency scheduled services are incompatible with the close to 100 per cent load factors which the tour operator will be required to achieve in order to be able to pass on to the traveler the cost savings of planeload transportation and achieve profitable operations.

sembled by the carrier itself, a distinction which has been made both by the Board[23] and the ICC.[24]

Finally, we take note of Lake Central's claim that Purdue Aeronautics should not receive inclusive tour charter au-

11748

thorization inasmuch as that carrier neither requested, nor offered evidence of the need for, such authority. However, we consider Purdue's application, which requested authority to engage in "charter" as that term shall be defined in any applicable Board regulation,[25] to be sufficiently broad to encompass inclusive tour charters. In addition, the Executive Vice President of Purdue testified in favor of inclusive tour charters. In any event, our findings herein are applicable to the supplemental carriers as a class, and Lake Central has not shown that these findings, particularly in regard to the public need for inclusive tours and their economic feasibility, do not also apply to Purdue.[26]

---

[23] Order E-17607, October 18, 1961.

[24] *Fordham Bus Corp.* v. *United States*, 41 F. Supp. 712, 717 (S. D. N. Y. 1941); *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689, 692 (D. N. J. 1956).

[25] The majority of supplemental applications were phrased in a similar manner.

[26] The route carriers argue that, even if the Board had the power, it should not grant inclusive tour authority because the supplementals would then abandon traditional planeload charters. In this respect, they cite the conduct of various supplementals in the mid 1950's, when, it is alleged, the carriers concentrated on individually ticketed services. The argument is at best speculative. There is nothing before us to indicate that the economic necessity to maintain utilization of aircraft will not provide a powerful incentive to maximize charter revenues from all possible sources. And although it is alleged that the supplementals will prefer inclusive

Diversion from scheduled services. The examiner found that his recommended liberalized authority, including tour authority, offered no significant threat to the route carriers. In attacking these findings, the route carriers argue *inter alia*, that travel agents promoting inclusive tours will have an economic incentive to solicit travelers who would normally use the scheduled carriers.

11749

The specter is raised of thousands of travel agents becoming tour operators and channeling substantial amounts of their pleasure traffic to the tours in order to protect their investment in aircraft chartered from the supplemental carriers. However, there is no basis for the assumption that the typical travel agent will undertake tour operations for his own account. Organizing such tours will normally involve substantial commitments, as well as financial risks, in connection with chartering aircraft, reserving hotel space, and the like, as well as heavy marketing and promotional expenditures. In our judgment, charter tour operations will be undertaken primarily by the large or wholesale travel agents who possess the facilities and financial resources which are required in order to package and market the tours. It is not to be expected, therefore, that the bulk of the travel agents will be subject to the economic pressure of having to fill chartered aircraft. On the contrary, since the agents' commission is based on a percentage of the tour fare, the individual travel agent

---

tour charters because of the assistance of the tour operator in promoting business and the lack of affinity restrictions, there is no showing that inclusive tours will be more profitable (or involve less cost) to the supplementals than traditional charters.

will have a greater incentive to sell the higher priced tour on a scheduled carrier.

It is also alleged that the examiner erred in his reliance upon the inclusive tour development in Great Britain. The examiner found that the British inclusive tours had not been shown to have resulted in any materially adverse impact on scheduled carriers. The route carriers argue that, assuming the validity of this conclusion,[27] the British

11750

tour program is distinguishable from the proposed tours in that (1) the British inclusive tours have concentrated on out-of-the-way resort markets not served by scheduled carriers, and (2) the tour applications are screened by the British government pursuant to a procedure whereby the diversionary impact on scheduled traffic is considered. It is, of course, true that the British tours differ from the supplemental tours in these respects. However, contrary to the characterizations by the route carriers, the examiner did not rely upon the British experience as an exact parallel to the inclusive tours proposed for U. S. supplementals. We take his finding on this point to be merely that the British experience, viewed as a whole, does not demonstrate that a limited and controlled U. S. experiment with inclusive tours will have a significant adverse impact on U. S. scheduled carriers. And we affirm that finding as one supported by the record.

In the last analysis, it is not possible to predict with any degree of certainty the actual amount of diversion from

[27] We believe the conclusion is amply supported by the examiner's findings.

scheduled services which may be occasioned by the tour operations. At this juncture, we are not persuaded that such diversion will be of sufficient consequence to overshadow the substantial public benefits which we foresee from the new class of service. Clearly there is no showing that a five-year experiment in tour operations would pose any significant threat to the continued growth and prosperity of the route carriers.

Finally, we must stress that the five-year duration of the tour authorization will provide a test period, following which we shall review the tour program to determine if it has fulfilled its promises. In the meantime, the Board's rule making powers will enable it to modify the terms and conditions governing the tour operations if that is necessary in order to protect other segments of the air transportation industry.

11751

Regulatory provisions. In conjunction with the instant decision, we are concurrently adopting Part 378 of the Board's Special Regulations,[28] which grants indirect air carrier authority to tour operators and sets forth the regulatory provisions governing the conduct of inclusive tour charters by the tour operators and the supplemental air carriers. While this regulation was originally proposed in a rule making proceeding,[29] many of its provisions were considered at length both by the parties and the examiner.

---

[28] Regulation No. SPR-14, adopted March 11, 1966.

[29] Notice of Proposed Rule Making SPDR-6, January 5, 1965 (30 F. R. 281), as amended by Supplemental Notice of Proposed Rule Making SPDR-6B, October 11, 1965 (30 F. R. 13077), Docket 15777.

(11751, 11752)

In prescribing regulations which will govern the effectuation and operation of the inclusive tour program, we are faced with the problem of attempting to reconcile the two opposing theories of (1) minimum restriction in order to give the tours flexibility and marketability, and (2) maximum restriction, in order to maintain the group concept and therefore prevent the tours from being used as a subterfuge for individually ticketed transportation. We believe the provisions proposed by the examiner, with certain modifications, offer the best resolution of these conflicting considerations, and we find that with these restrictions, the tour groups will be sufficiently cohesive units so as to qualify as charter-worthy under the Act. Undoubtedly,

11752

experience under the regulation will indicate the need for modifications, either to prevent undue diversion from scheduled services, or to relax restrictions that may prove too onerous. Our rule making powers are ample to deal with these situations as they arise.

The keystone to Part 378 is the manner in which the individual tours or series of tours, and particularly the tour operators' participation therein, will be authorized by the Board. In contrast to the regulation as proposed, which provided that tour operators would be granted blanket exemptions from applicable provisions of Title IV of the Act, the examiner recommended a prior approval procedure under which no tour could be promoted or operated without specific and advance approval granted by the Board. The examiner recognized that the "blanket exemption" approach would minimize the administrative burdens

on the Board and would give the carriers and the tour operators the greatest degree of operating flexibility. Nonetheless, he found that such considerations are outweighed by the necessity that the Board exercise firm control over the scope and direction of the inclusive tour charter program during its initial and formative stages.

We agree with the examiner that a "prior approval" procedure is necessary, primarily because the administration of the tour program will undoubtedly involve problems which cannot be anticipated at the present time. However, inasmuch as such a procedure will impose substantial burdens on the Board as well as the carriers, and because we

11753

believe that its indefinite duration is unnecessary, provision in the regulation is being made for the lapse of the prior approval requirement on January 1, 1968. At such time, the Board will consider appropriate amendments in the regulatory provisions that experience in the interim period indicates are necessary to protect the public against abuses which might otherwise occur under the "blanket exemption" procedure. Of course, we reserve the right to extend the prior approval requirement should such a step be found necessary.[30]

With respect to the pricing requirement, which we believe critical to the success of the tour program, the examiner proposed that the tour price be no less than 110 per

[30] It should be emphasized that the prior approval procedure, as adopted, involves only the screening of applications in order to determine if they meet the regulatory requirements. Consequently, factors such as diversion, need, and other economic issues will not be considered.

cent of the lowest basic scheduled fare. In our view, however, pegging the minimum price to a percentage of the lowest *basic* fare will allow scheduled carriers to price the tour operator out of the market through the utilization of various promotional and excursion fares. Accordingly, we are revising the pricing provision of Part 378 to require that the minimum price be based on 110 per cent of any available scheduled fare, including promotional fares, subject to the terms and conditions applicable to such fare as set forth in the scheduled carriers' tariff.[31] We believe that such a price will enable the tour operators to assemble a package sufficiently marketable to induce them to risk chartering the aircraft and to vigorously and successfully promote the tours. On the other hand, the 10 per cent

spread between the available scheduled fare and the tour price, coupled with the other conditions adopted herein, should obviate any inducement to substitute travel on inclusive tours for point-to-point transportation.[32]

We are also revising Part 378 as proposed by the examiner to increase the number of required tour stops from

---

[31] In other words, the price of a particular tour may be based on a scheduled fare only if the tour meets the conditions of that fare with respect to days of departure and return, duration of trip, etc.

[32] We have clarified the regulation by providing in effect that the minimum price shall be determined as of the date of filing the Tour Prospectus with the Board. It should also be noted that we have not adopted the proposed minimum charge of $15.00 for the ground elements of the tour. In our judgment, such a provision is meaningless in light of the requirement that the tour price include all hotel accommodations and necessary surface transportation for a minimum of seven days.

two to three. The three-stop requirement will, in our judgment, increase the emphasis on the tour aspect of the package and will provide further assurance against the tours being used as a subterfuge for individually ticketed service between the originating city and the major city of destination.

Other revisions which we are incorporating into Part 378 include the following:

a. The term "inclusive tour" has been substituted for "all-expense tour." Inclusive tour (IT) is the label currently being used to describe packaged tours both in Europe and in the United States. Moreover, the phrase "all-expense tour" can be misleading to the general public because the tour price need not include all expenses of the trip.

b. Section 378.2(b)(3) will set forth only those components which the land portion of the tours *must* include, as

a minimum, rather than listing also the land components which *may* be included. Within the category of required land components are hotel accommodations and transportation between interim stops, including transportation to and from the air and surface carrier terminals utilized at such stops.

c. Section 378.2(b)(4) will specify that the tour price shall be based on the scheduled fare over the circle route beginning and ending at the point of origin, via such points where stopovers are made. This change removes the possibility that this subsection, as phrased in the proposed

regulation,[33] could be construed to mean that the tour price would be based on the scheduled fare between the point of origin and the farthest intermediate point.

d. There is no need for the tour operator, in listing the tour price, to allocate the cost as between the air transportation and the other aspects of the tour, considering that the Board will already have the tour price, the charter cost, and the number of expected participants and seats in the aircraft. Consequently, we are striking this requirement from §378.13(e).

e. We recognize that the tour operator will be in no position at the time of filing the Tour Prospectus to ascertain the number of persons who will participate in the proposed tour. Accordingly, §378.13(f) is amended to prescribe that the "expected" number of tour participants be listed.

f. In response to the suggestion that the term "cities," as used in §378.2(b)(2), is not sufficiently broad to cover all of the possible locations at which overnight tour stops might be made, we are expanding this provision to pertain to "places."

11756

g. Section 378.3 has been modified so as not to relieve the tour operator of the statutory obligation to provide safe and adequate service, equipment, and facilities in connection with tours operated.[34]

---

[33] In Part 378 as proposed, the tour price was based on the scheduled fare "between the point of origin and the point of destination via such points where stopovers are made."

[34] In view of this change, we do not find it necessary to impose the specific regulations requested by the Port of New York Author-

h. With respect to the "prior approval" procedure, prospective tour operators will be required to file a statement containing a detailed picture of their experience, business structure, financial condition and the like (§378.12). In addition, the regulation sets forth the factors which the Board will consider in determining whether a tour operator applicant is properly qualified to engage in inclusive tour operations (§378.11(d)).

Various parties to the rule making have proposed changes in the regulation which we believe are unwarranted. In this respect, several supplemental carriers have complained that the Tour Prospectus and post tour reporting provisions (§§378.13 and 378.20) require verified statements concerning a number of matters of which the carrier could not reasonably be expected to have firsthand knowledge. In our judgment, however, the administration and enforcement of the regulatory conditions will be considerably enhanced by imposing on the carrier the duty of taking all reasonable measures to assure itself that the charters are in compliance with the regulation.[35] Such a requirement is similar to that prescribed by Part 295 of the Board's Economic Regulations, under which supplemental carriers must warrant statements of the charterer and travel agent contained in the Statement of Supporting Information.

---

ity in order to insure that the tour operators make satisfactory arrangements to meet the needs of passengers at air terminals.

[35] For the same reason, we will not adopt the suggestion of the travel agents that the tour operator, as the main party in interest, should be allowed to apply for waivers from regulatory provisions, but rather will require the supplemental carrier to be the conduit through which all waiver applications must be channeled.

Hawaii and Alaska

No party opposes the grant of authority for military charters or traditional civil charters between the 48 contiguous states.[36] The intervening trunkline and international route carriers, however, continue to oppose the grant of any civil charter authority for services to and from Hawaii and Alaska.

As to Hawaii, the intervenors argue that the establishment of reduced Hawaiian excursion fares by the scheduled carriers in November, 1963, eliminated any need that might otherwise have existed for "low cost" charter service. The supplemental carriers now hold Mainland-Hawaii authority under their interim certificates, and, as found by the examiner, their Hawaiian operations have been of significance to them. The excursion fare argument presents nothing that would lead us to a conclusion different from the examiner's even were we considering the award of only traditional charter authority. They become even less persuasive when applied to the new and broader inclusive tour charter authority we are granting.

With respect to Alaska, the intervenors contend that the examiner's generalized findings of need based on the future

[36] Flying Tiger, while apparently conceding that there may be a limited role for supplementals in the domestic charter market, contends that no need has been shown for the grant of permanent domestic cargo charter authority to all qualified applicants. However, Flying Tiger did not indicate how many carriers should be authorized to operate and did not present any evidence at the hearing showing that it would be significantly affected by continuing the domestic cargo charter authority of supplemental carriers as a class.

growth of Alaska cannot stand in the face of his own specific findings of only one supplemental charter to Alaska in 1963, of inadequate tourist facilities and high cost levels which depress tourist charters, and of the Board's own

11758

expression of concern over the multiplicity of the carriers in this area.[37] The arguments based on historic charter operations ignore our developmental and promotional responsibilities under the Act, and we find no reason for believing that Alaska, with its natural tourist attractions, will not in the future prove to be an attractive vacation spot for travelers from other states. The Board's concern over the multiplicity of States-Alaska carriers has been with the uneconomic nature, and high subsidy cost, of the scheduled route pattern under which four carriers were authorized to provide competitive scheduled services to Alaska.[38] Civil charters to and from Alaska have not constituted a significant part of the operations of the scheduled carriers and there is no showing that charter operations by the supplemental carriers would have any significant adverse effects upon them.

We fully agree with the examiner that there is no persuasive basis on this record for singling out our two newest states and denying them the benefits of supplemental air

---

[37] Citing *Pacific-Northwest Alaska Air Service Case,* Order E-21955, March 26, 1965.

[38] Of the four carriers, only the two largest, Pan American and Northwest, are on the brief here under discussion. The two smaller carriers, Alaska Airlines and Pacific Northern did not join in that brief.

(11758, 11759)

transportation that are being made available to their sister states.[39]

11759

Qualifications of the Applicants

Conner, Holiday, and Stewart challenge the examiner's findings that they are not fit, willing and able.[40] Although each of the applicants addresses itself to its own qualifications, running through all their arguments is the common theme that the examiner applied inappropriate tests in evaluating their fitness and acted arbitrarily in finding them unfit, while finding certain of the operating carriers who are allegedly weaker from a qualification standpoint, fit. In his decision the examiner pointed out the important considerations that are of decisional significance in passing upon the fitness of applicants. He correctly noted that the showing required of a company which has been able to operate continuously and successfully and, therefore, can establish going concern status, is less demanding than that required of a new company or of a company that has had prolonged lapses in its operations. He further took cognizance of the clearly indicated intent of Congress in enacting the so-called supplemental air carrier legislation in 1960 that only those carriers that established minimum

[39] We have considered the arguments in opposition to a grant of split-charter authority and have found nothing that warrants elaboration on the examiner's disposition of that issue.

[40] USQA, which the examiner also found unfit, filed exceptions to the recommended decision. However, it did not challenge the examiner's findings, but urged only that it was attempting to obtain financing and that decision on its qualifications should therefore be deferred. It presented nothing that would warrant such a deferral.

financial strength and stability sufficient to protect the public from risk or abuse should be permitted to operate. After reviewing the examiner's findings in the light of the record and the contentions of these three applicants, we conclude that he applied the appropriate tests to the evi-

11760

dence of record fairly and equally, and correctly found each of the applicants to be unfit within the meaning of the statute.[41]

Specifically, Conner points to the excellent safety and compliance record of a predecessor company in past operations under the direction of Mr. Conner. Stewart points to the limited scope of the operations he proposes. Both Conner and Stewart attack the examiner's failure to accept their valuations of certain aircraft owned by them, and to find them financially fit on that basis notwithstanding the absence of binding commitments, backed by financial proof that would assure that the needed capital would be forthcoming. Holiday challenges the finding that it is a "paper" company.

However, the inescapable fact is that each of these applicants comes before us here as a new company that is not now operating large aircraft in air transportation. As such, it must shoulder a substantial burden in establishing that it is fit to be entrusted with a certificate of public convenience and necessity. The fact that certain of the deficiencies in their showings might not be disqualifying for a going concern which has demonstrated through continú-

[41] The examiner's findings are set forth in part in the body of his decision and in part in Appendix A thereto.

ous operations its ability to cope successfully with the ups and downs of financial fortune, does not warrant a finding that they too are fit. In short, the matters urged upon us by the applicants, do not, when viewed in the context of their over-all showing, warrant conclusions different from those reached by the examiner.

11761

ONA and Standard. These two carriers present a special situation. For many years both ONA and Standard conducted successful supplemental operations. Subsequent to the time that they received interim certificates in 1962, ONA went into bankruptcy and Standard had its interim certificate suspended by the Board on the ground that it was no longer financially fit. The record before the examiner afforded no basis for a finding that they are now fit. However, the carriers have now come forward with substantial allegations of financial rehabilitation supported by a detailed presentation of the changes they claim have occurred and render them now fit. ONA points to evidence presented in its behalf in the *Reopened Transatlantic Charter Investigation,* Docket 11908, which is now pending before the Board, and in reports and documents filed with the Board. Standard similarly points to the availability of finances which it asserts will establish its fitness.[42] The showing that has been made warrants reopening the record in this case

[42] Standard's allegations rest principally on evidence introduced in the proceedings in Docket 13890 on its request for a lifting of the suspension of its interim certificate. By Order E-23222, February 11, 1966, the Board vacated the suspension of Standard's interim certificate.

to afford the two applicants an opportunity to attempt to establish that they are now qualified.[43]

11762

Vance. The examiner found that Vance, although marginal in financial qualifications, was fit, willing, and able. Recently, however, facts have come to the Board's attention that require, in the fulfillment of our responsibilities, a reopening of the record for further hearing on Vance's current qualifications. Thus, Vance has been found unqualified by the appropriate military agency for the performance of services for the Department of Defense. Further, Vance's air carrier operating certificate has been suspended by the Federal Aviation Agency on an emergency basis, with the result that the carrier cannot provide any services under its interim authority.

We obviously have formed and express no opinion on the alleged violations upon which the suspension order of the FAA was based. Vance has appealed that suspension to the Board, and the disposition of the matter will be made on the record in that proceeding. However, we cannot close our eyes to the possible economic effect on Vance of its disqualification for military business, and the suspension of its operations as a result of FAA action. In these circumstances, we find that further hearing on the applicant's fitness is warranted.

---

[43] The proceedings on remand will embrace not only the fitness issue but also the question of the precise authority that should be granted the two carriers if they are ultimately found to be qualified.

11763

Terms and Conditions

The examiner's recommended decision contains an outline of a comprehensive set of regulations designed to govern the charter operations of the supplemental air carriers under their section 401 certificates. His recommendations would incorporate into one regulation the pertinent provisions of the interim certificates of the supplemental air carriers; the existing provisions of Part 208, which contain various terms, conditions and limitations applicable to supplemental air transportation; and additional conditions patterned after provisions appearing in Part 295, the regulation governing transatlantic supplemental air transportation. We have, for the most part, followed his recommendations and are issuing in one regulation (revised Part 208 attached hereto and made a part hereof) all of the rules for the domestic charter operations of the supplemental air carriers certificated under section 401, except those rules applicable to inclusive tour charters which will be issued as a separate regulation (Part 378). The only major change from the examiner's recommendations concerns the reporting requirements which we have condensed from those now provided in Part 295 in accordance with the Bureau's proposal.

* * * * * * * *

We have considered the remaining contentions of the parties and their exceptions to the recommended decision and find that, except to the extent indicated herein, they should not alter the results we have reached.

Accordingly, in view of the foregoing and all the facts of record, we find:

1. That the public convenience and necessity require that certificates be issued to American Flyers, Capitol, Johnson, Modern, Purdue, Saturn, Southern, TIA, World, and Zantop authorizing supplemental air transportation of persons and property between any point in any State of the United States or the District of Columbia and any other point in any State of the United States or the District of Columbia, such authority, except for inclusive tour authority which is authorized for a period of five years, to remain in effect for an indefinite period.[44]

2. That the applicants listed in paragraph 1 above are each citizens of the United States within the meaning of the Act, and are fit, willing, and able properly to perform the supplemental air transportation hereinabove authorized to be performed by each of them and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder.

3. That the public interest requires the adoption of a new Part 378 of the Special Regulations and revision and reissuance of Part 208 of the Economic Regulations.

4. That the record in this proceeding should be reopened for further hearing at a time and place hereafter to be designated on the qualifications for supplemental air transportation of ONA, Standard, and Vance, and on the scope

[44] We are revising the certificates attached to the recommended decision so as to delete paragraph 2 since the authority to engage in supplemental air transportation of persons and property includes military as well as civilian charters.

11765

of charter authority, if any, which should be granted to ONA and Standard.

5. That all applications consolidated herein except insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession, filed by Conner, Holiday, Stewart, and USOA should be denied, and that decision upon such applications, insofar as not denied by this paragraph, should be deferred until further order of the Board.

6. That, except to the extent otherwise indicated, all applications involved in this proceeding, except insofar as such applications seek authority for overseas and foreign air transportation and air transportation between places in the same territory or possession filed by the carriers listed in paragraph 1 hereof, should be denied, and that decision upon such applications, insofar as not denied by this paragraph or hereinabove granted, should be deferred until further order of the Board.

7. That decision upon the applications filed by ONA, Standard, and Vance should be deferred until further order of the Board.

11766

8. That the motion filed herein by ONA, except to the extent granted herein, should be denied; and that the motion filed herein by World should be dismissed.[44]

An appropriate order will be entered.

---

[44] On September 20, 1965, ONA filed a motion to reopen the record for the purpose of receiving new evidence on ONA's fitness

MURPHY, Vice Chairman, and MINETTI, Member, concurred in the above opinion. GILLILLAND, Member, filed the attached concurrence and dissent. MURPHY, Chairman, and ADAMS, Member, did not take part in the decision.

11767

GILLILLAND, MEMBER, CONCURRING AND DISSENTING:

I have been unable to escape the conclusion that the decision is contrary to law and to the policy of the Federal Aviation Act.[1] The Board has exceeded its statutory authority by defining all-expense tours by tour operators as constituting "charter trips in air transportation" and, therefore, supplemental air transportation within the meaning of section 101(33). The action is contrary to policy in that it tends to destroy or seriously impair the regulatory scheme.

The Board concedes that supplemental air carriers are prohibited from providing all-expense charter tours.[2] Cer-

---

or, in the alternative, to take official notice of pertinent reports required to be filed by ONA with the Board and evidence of ONA's fitness presented in the *Reopened Transatlantic Charter Investigation*, Docket 11908 *et al.* On September 27, 1965, World filed a motion to reopen the record for receipt in evidence of two paragraphs from the Fifth Report of the Air Transport Licensing Board of Great Britain or, in the alternative, to take official notice of these two paragraphs. The Board deferred decision on these motions until after oral argument (Order E-22757) October 11, 1965). Since we have decided to reopen the record for further hearings on ONA's qualifications, ONA's motion, except to the extent granted herein, will be denied. World has requested that its motion be withdrawn and, accordingly, its motion will be dismissed.

[1] Federal Aviation Act of 1958. 72 Stat. 731, as amended, 49 U. S. C.

[2] The examiner found (R. D. p. 15), and the Board adopted the finding, that supplemental carriers are prohibited from selling in-

tainly if the Board considered that it had authority to authorize supplementals to provide such service it would have granted the authority directly rather than indirectly to unregulated tour operators. The Board has determined[3] that individually ticketed service by supplemental carriers was not within the definition of charter service as set forth in the Act. However, in this case it has attempted to circumvent the law by injecting the tour operators between

11768

the supplemental carriers and the general public, with the view that by this device the fundamental distinction between charter and individually ticketed service might be preserved since tour operators will solicit the general public, sell individual tickets, and then merely wet lease aircraft from supplementals. Consequently, a tour operator will be able to provide an individually ticketed, scheduled service between every large city in the United States and all major resort areas, and to all other cities for that matter. The tour operator device indirectly puts the supplemental air carriers in the business of providing individually ticketed service, and is per se unlawful. The

---

dividually ticketed service as part of an all-expense tour. The examiner said:

> ". . . . There is some suggestion by various applicants here that they should be authorized to sell individually ticketed all-expense tours directly as well as by charters to ticket agents. The Board has already determined that such proposals are tantamount to individual services which do not fall within the scope of charter transportation." n. 30.

[3] *Transatlantic Charter Investigation,* Order E-17607, October 18, 1961.

Board cannot accomplish by indirection what is directly proscribed.

Two cases are primarily relied upon as support for the conclusion that all-expense tours are legal. *American Airlines, Inc.* v. *C.A.B.*, 348 F.2d 349 (1965). *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689 (1956) (*Tauck* case). The *American* case contrary to the majority's holding gives the Board very little discretion in defining "charter," and the discretion is severely limited.

The Board concludes, however, that since the *American* case, *supra*, permitted the Board to define "split charters" as "charter trips in air transportation" it therefore has the power to define charter so as to include all-expense tour charters. Such conclusion is not valid since split charters are a totally different concept than that of all-expense tour charters. A split charter involves the solicitation of *two bona fide charterable groups* to ride on the same aircraft. Each group is independently charterable

11769

and is not formed by *the sale of individually ticketed travel* to the general public. All-expense tour charters, on the other hand, involve a direct solicitation of the general public for individually ticketed travel. The *American* case holds that so long as a split charter does not involve individually ticketed travel it is lawful. However, all-expense tour charters do involve the direct solicitation of the general public for individually ticketed service and are therefore unlawful under the holding in the *American* case.

The *American* case does not give the Board carte blanche to define charter trips. The language of the court is severely restrictive as shown by the following:

(11769, 11770)

> "We conclude Congress intended, *although not without limits,*" that the Board be free to define charter . . . "*whatever the limits* on the Board's power of definition, *those limits* are not breached by a definition which permits two one-half groups to charter one-half an aircraft each." (Emphasis added.) p. 354.

The court specifically adjured the Board to "maintain the integrity of the charter concept" and "to preserve the distinction between group and individually ticketed travel; *within these limits* it is for the Board to evolve reasonable definitions." The Board's limits of definition are clear to preserve the distinction between group and individually ticketed service. This, the Board has not done since it has employed a sham device, *i.e.,* the "tour operator", to eliminate the distinction. The *American* case clearly indicates that such action is *beyond the limits* of the Board's authority of definition.

The Board also relies upon the *Tauck* case, *supra,* which emanated from a decision of the Interstate Commerce Commission under the Motor Carrier Act. That case involved

11770

a grant of a specific authorization, to a specific qualified applicant, under a specific regulatory statute, and is readily distinguishable from the unsolicited gratuity broadly granted to the nebulous all and sundry who are the unknown and undefined beneficiaries in this case. In the recent *Transatlantic Charter Investigation,* decided October 8, 1963,[4] it was argued to the Board that the classic definition

[4] Appendix A to Order E-20530, February 24, 1964.

of charter, as defined by the Interstate Commerce Commission, requires that exclusive use of a vehicle be engaged by a single charterer. The Board rejected the definition stating:

> ". . . . [R]egulatory concepts under the Interstate Commerce Acts are not to be imported uncritically into the Aviation Act. *C.&S. Air Lines* v. *Waterman Corp.*, 333 U.S. 103 (1948); *Las Vegas Hacienda, Inc.* v. *C.A.B.*, 298 F.2d 497 [sic] (430) (9th Cir., 1962)." Appendix A to Order E-20530, February 24, 1964. n. 51.

There is no attempt to distinguish the Board's acceptance in this case of surface transportation precedent.[5]

Furthermore the Board errs in the conclusion that all-expense tour charters are well established in surface transportation and that the legality has long since been settled, as against contentions that they are mere subterfuges for individually ticketed transportation. The *Tauck* case is cited as support. However, the stated reasons for judicial affirmation of the ICC action in the *Tauck* case were that there was no express provision in the Motor Carrier Act and no legislative history to indicate that all-expense tour

operators were to be prohibited from carrying on the long-established practice of chartering buses. The court also said "that no question about tour operators' use of charter

---

[5] Judge Burger in *American Airlines, Inc., et al.* v. *C. A. B.* (C. A. D. C. Nos. 18833 *et al.* decided March 2, 1966) pointed out "The Supreme Court said recently in another context, "federal agencies are not fungibles. . . —Congress has treated the matter with attention to the particular statutory scheme and agency." *UAW* v. *Scofield*, 382 U. S. 205, 210 (1965).

buses was raised for 13 years after the Motor Carrier Act became effective" and this is a "cogent consideration." The court gave great weight to the fact that there was a long-established practice in the motor carrier field to permit all-expense tour charters. On the other hand in air transportation there has never been a single instance of an all-expense tour charter by a travel agent. In contrast to the complete absence of legislative history to the Motor Carrier Act relating to all-expense tours by tour operators, it will be shown, *infra*, p. 6 that there is a plethora of legislative history relating directly to all-expense tours and showing a clear and unequivocal intention to prohibit all-expense tours by tour operators in air transportation.

Although the Board states that the legality of all-expense tours in surface transportation is well settled, this is not the case. On February 7, 1966 the Interstate Commerce Commission instituted a general investigation[6] of the operations of tour operators and bus lines which conduct all-expense tours. The basis for the investigation was that the Commission believed that considerable confusion and abuses had arisen in the all-expense tour charter operations conducted by travel brokers.

The investigation was based on decisions in *Michaud Bus Lines, Inc., Extension-Tours,* 100 M.C.C. 432 (1966), and *The Greyhound Corporation* v. *Edwards,* 100 M.C.C. 453 (1966). In those cases the regularly certificated bus companies alleged that tour operators and other carriers, under the guise of providing all-expense tours were actually pro-

[6] Ex Parte No. MC-29 (Sub-No. 1) and (Sub-No. 2) "Passenger Transportation in Special Operations" and "Operations of Brokers of Passenger Transportation."

viding unauthorized individually ticketed scheduled point-to-point bus service.

11772

In the *Greyhound* case, the Commission stated that the concern of the scheduled bus companies with respect to the operations of tour operators was easily understood "for the closer that the services arranged by brokers approach point-to-point, 'ordinary' bus service, the more likely they are to attract patrons from the regular schedules of carriers such as Greyhound." The Commission in the *Greyhound* case, was sufficiently impressed with the allegations of the bus companies to conclude that an investigation of the entire field of all-expense tour charters was warranted.

The ICC investigation will include the issue of imposing regulations to control the all-expense tour charters. Attached to the order of investigation and to be considered as an issue were revised regulations submitted by the National Bus Traffic Association.[7] The proposed regulations are designed for one purpose only, to assure that an all-expense tour charter is required by the public convenience and necessity and is not individually ticketed point-to-point regularly scheduled transportation. Based on the foregoing all-expense tours in surface transportation are not now well established.

The legislative history of the Federal Aviation Act, shows that Congress specifically and categorically intended to prohibit "travel agents"[8] from soliciting the general public for all-expense tour charters, and then char-

[7] See Appendix I.

[8] The authority of the new regulation (Part 378) is even broader than this and is not limited to travel agents.

(11772, 11773)

tering aircraft from supplemental air carriers. It is crystal clear that Congress considered all-expense tours by travel agents to be the same as individually ticketed services and therefore prohibited. The original Senate bill, S. 1969,

11773

August 8, 1961, contained a definition of charter which would have specifically permitted the Board to authorize all-expense tours by travel agents. However, the House Committee refused to adopt the Senate definition and eliminated it. The Senate agreed to the House rejection and three senators, managers of the Senate bill, stated the reasons for concurrence as being the desire not "to confer this power on the Board." The Joint Conference Committee adopted the House version and the five managers of the bill stated plainly and individually that the prime reason for the rejection by the House of the Senate version was to eliminate the provisions for all-expense tour charter authority by travel agents.

Mr. Oren Harris, Chairman of the House Interstate and Foreign Commerce Committee, stated categorically:

> "... *Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language.*" 108 Cong. Rec. 12322 (1962). (Emphasis added.)

Mr. Williams, Chairman of the House Committee on Transportation, was equally clear on this point in answering the question asked of him by Congressman Walter:

"It [the Senate bill] proposed that all-expense travel agents could charter airplanes in their own name and then sell space to the public for all-expense tours. This would have changed completely the function of the travel agent and put him in position to engage in rate cutting.

"Can the gentleman tell us what happened to that provision?"

MR. WILLIAMS. "The Senate receded and accepted the position of the House on that provision . . . . The all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in our position on that, also." 108 Cong. Rec. 12322 (1962).

11774

Senator Scott, the Senate manager of the bill, was emphatic with respect to this issue and the Board's lack of authority to authorize all-expense tours:

"Another essential element is that the person who charters an airplane cannot resell the space to individuals or solicit the general public to buy space. This is necessary to prevent break-down of the regulatory system, and most particularly the rate regulatory system. If this were not one of the rules, a travel agent could charter an airplane, and then offer the seats to the general public at less per head than the tariff fares the airplane must observe as to each passenger.

"The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' Such a group could have

been assembled from the general public. This would have meant that travel agents could have chartered aircraft, and then sold the space to ordinary passengers traveling on all-expense tours.

"The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air transportation. There should be no question about that. *The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation. This being the thrust of the congressional action, it would be clearly improper if the Civil Aeronautics Board were hereafter to undertake to rewrite the law and to authorize, under guise of charter, all-expense-tour operations, ...*" 108 Cong. Rec. 12284-5 (1962). (Emphasis added.)

Senator Thurmond, commenting upon the Senate version of all-expense tours by travel agents, stated:

"I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. *This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision.*" 108 Cong. Rec. 12285 (1962). (Emphasis added.)

Senator Cotton added his opinion of the Senate version of all-expense tours:

"I do wish to comment briefly on one aspect of the conference committee's action. The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on

11775

charter flights to individual members of the general public who were on all-expense-paid tours. *I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board.*

"The elimination from the bill of the general Senate language defining charter service, should not, however, in my view, be construed as giving the Board any kind of carte blanche with respect to long-established principles of law relating to charters. The Civil Aeronautics Board has, in the past, rejected proposals to water down the safeguards against the abuse of charter service, and I hope the Board will continue to be firm in this respect. *The Board has a serious obligation to see that charter services do not become individually ticketed services through subterfuge or abuse.*" 108 Cong. Rec. 12284 (1962). (Emphasis added.)

The foregoing and unanimous statements of the managers of the bill, in both the Senate and House, demonstrate beyond peradventure that Congress did not intend to grant the Board authority to define all-expense tours by travel agents as charter trips in air transportation. Despite the Board's efforts to obscure the intent of Congress, there is no ambiguity.

(11775, 11776)

The Board, on the other hand, concludes that since PL 87-528, as adopted, did not contain a definition of charter, therefore, "this matter was to be left to the Board to determine." The Board reasons strangely that because the Congress rejected a definition which would in fact have given the Board authority and failed to include any definition of charter then the Board acquires complete discretion to define "charter." If ambiguity were present, I still interpret the rejection of the Senate version as meaning the Congress did not want the Board to have the authority. However, there is no ambiguity as the foregoing legislative history clearly shows.

The Board's reasoning obscures clear legislative history and violates all canons of statutory construction. The Board finds, "In short, the Senate version of the Bill as well as the Senate committee report make clear that the Senate was dissatisfied with the Board's historic refusal to authorize inclusive tour charters." There is not one scintilla of legislative history of any kind to support this gratuitous conclusion.

11776

The Board takes a position that the statements of the floor managers are not to be referred to and the House rejection of the Senate attempt to confer all-expense tour authority on the Board clarifies the entire issue. This is indeed esoteric statutory construction. According to the Board a statement of Representative Harris expressed no opinion as to the Board's legal authority to authorize all-expense tours. It seems to me that Mr. Harris was quite clear that the Board should not and further would not have legal authority to authorize all-expense tours. Mr. Harris,

in a written statement submitted for the record, pointed out that the Senate bill contained a definition of charter which would have permitted the Board to authorize all-expense tour charters but the House rejected such definition. Obviously if Mr. Harris wanted the Board to have such authority he would not have objected to the Senate version and if he thought the Board, under the amended bill, had such authority he would have emphatically and clearly said so at this point.

The Act sets forth a comprehensive scheme for the regulation of all air carriers, including supplementals.[9] Under this scheme it is the scheduled carriers who constitute the backbone of the air transportation system. In 1962 Congress did create a new class of carriers, supplementals, for one reason only,—*to supplement scheduled air transportation by providing "charter service."* Such carriers were not created to duplicate scheduled services by wet leasing aircraft to persons who then sell individually ticketed space at lower rates than offered by the scheduled carriers. Under the Board's decision the supplementals will have

every incentive to abandon the planeload charter concept, the sole reason for their existence, and turn to the wet leasing of aircraft to tour operators.

The Board, on the other hand, concludes that they will have an economic incentive to continue planeload charter service. This is illogical since, with the active assistance of 5,500 or more tour operators promoting the services and free of affinity regulations and restrictions against

[9] Federal Aviation Act of 1958. Sec. 401. (72 Stat. 754, as amended by 76 Stat. 143, 49 U. S. C. 1371.)

mass advertising, the supplementals will hardly fail to find it inviting to concentrate their efforts on the promotion of all-expense tours. The British experience in this respect is significant. The British tour operators have concentrated heavily on selling all-expense tours since a booking on the scheduled airlines returns a profit of only 7½ percent to the travel agent, whereas, on an all-expense tour charter with an independent airline there is a minimum profit of 16 percent, and much more if the tour operator charters the aircraft and preempts hotel rooms.[10]

The "all-expense tour" as contemplated by the Board does not "supplement" scheduled services. It merely duplicates, at cutrate fares, the services now available on the certificated carriers. The Board attempts to distinguish and to show that all-expense tours are "supplemental" in that by the use of the "charter" mechanism a different service is provided. It contends that the all-expense tour is different because the passenger is subjected to the rigidities of a group itinerary, must be willing to travel and share facilities with strangers, must agree to the necessary regimentation of group travel, will be confined to predetermined departure and arrival times, is a different class of traveler

not now using scheduled services, and, finally, that the restrictions imposed by the Board make it an entirely different service.

None of these attempted distinctions will stand scrutiny. To demonstrate that all-expense tours do not supplement, but merely duplicate, it is enough to construct a theoretical

[10] *The Economist*, February 12, 1966, p. 627.

tour between any number of resort areas. Any New York tour operator could solicit the general public by means of mass media advertising (*i.e.*, newspapers, radio, television) for an all-expense tour to New York-Miami-San Juan, departing New York at 12 noon daily and returning to New York seven days later at 5 p.m., with one night in San Juan and by cruise ship to the free port of St. Thomas, at 110 percent of the lowest available fare, or $26.00 over the lowest available New York-Miami-San Juan fare, including hotel accommodations and water tour. There is no requirement that all tour passengers be accommodated at the same hotels or that they take part in the overnight side trip. As can be readily seen from the above, there is no rigidity of itinerary, no regimentation, and scheduled services can be provided. A group assembled for the purposes of a tour has no cohesiveness or affinity. It is not a "charter" under any definition but a unit for one reason only—to be transported between New York, Miami, and San Juan at a cut-rate price. The so-called restrictions impose no inconvenience for the point-to-point passengers, but the services do offer a substantial financial incentive.

This same sort of service can be provided by a tour operator between any pair of points,[11] viz., New York-San Juan nonstop with overnight cruises to two of the three Virgin Islands for $10.50 over the New York-San Juan fare.

11779

A passenger merely interested in a New York-San Juan nonstop could remain in San Juan and be out of pocket

---

[11] New York-San Francisco-Honolulu and an overnight trip to The Outer Islands.

only two nights' lodging and meals. This, of course, would be no financial deterrent to passengers who are already receiving a tremendous bargain for about $10.50 above the lowest available fare. The total trip cost is less than the normal fares even if the overnight side trips are omitted. Several other examples could be given, viz., New York-Las Vegas, Los Angeles, and San Francisco. All of these tours would be extremely attractive to the normal vacation-bound passenger now utilizing scheduled services. Today the average vacation traveler is peripatetic and such tours would fit in with almost any vacation schedule. There is therefore a reasonable basis for assuming that the majority of vacation-bound passengers who now utilize the scheduled carriers for this type of service will be diverted to the tour service of the supplemental carriers.

A daily schedule between such points providing point-to-point air transportation would be heavily utilized by a substantial number of passengers. Such service could be provided every hour of the day and every day of the week. This is authority which the certificated scheduled carriers do not have. The certificated carriers may provide all-expense tours but they are limited to their route structures. More important, however, is the fact that the certificated carriers are prohibited from providing charter trips in air transportation solicited not only from individual members of the public but also if arranged by a tour operator.[12] Thus the principal distinction between the two services is, in fact, that an authority is being granted to the unidentified tour operators which is vastly greater than that possessed by the

[12] Part 207 of the Board's Economic Regulations. (14 C. F. R. 207.)

regular carriers who have gained their certificates in competitive adjudicatory proceedings. The authority granted to the tour operators is subject only to the Board's administrative discretion, if it should be considered that it has retained any, and for which no guidelines have been set up in the new regulation.

The Board's finding that all-expense tours are directed at and will attract a new class of travelers, is directly contrary to the holding of the Board in the *Skycruise Case*, 10 C. A. B. 751 (1949), wherein a request for all-expense tour authority was denied for the reason that it was merely duplicative of the service of the scheduled carriers. It was there stated:

> "In the final analysis, we are not convinced that the evidence in this case warrants the conclusion that the public convenience and necessity require the proposed service. While facilities providing for escorted tours serve a useful public purpose, it has not been satisfactorily demonstrated that such purpose cannot be met by the presently certificated carriers and routes. The record discloses that the services of the domestic carriers cover all types of vacation travel by air, and that the establishment of any additional service to accommodate vacation travel would result in substantial diversion of traffic and revenue contrary to the public interest. The applicants' contention that there will be no diversion since the potential to be tapped will represent newly generated traffic is not persuasive. In our judgment, group escorted travel, like any other

form of tourism, has its origin within vacation travel, and any additional and duplicating service of the type here proposed would diminish the size of the vacation travel market presently available to the domestic certificated carriers. The impact of such services and the losses resulting therefrom may have a serious effect upon these latter carriers." 10 C. A. B. 751, 755 (1949).

The Board's well-reasoned conclusions in the *Skycruise Case* apply with equal, if not greater, force to this case for there is here no evidentiary record as to the public need for such services, or its diversionary impact on the scheduled services.

11781

The Board finds that all-expense tours will not divert traffic from the scheduled carriers primarily on the theory that tour operators will lack the financial incentive to promote such tours. The previously mentioned British experience rebuts this conclusion and, further, since a large part of such traffic is promoted and sold by travel agents, agents offering all-expense group tours on flights they have committed themselves to charter will logically channel their group tour traffic to such charter flights in order to preserve their investments in organization and promotion. Indeed the Board's decision raises a substantial conflict-of-interest issue. The travel agents now account for approximately 30 percent of the scheduled carriers' traffic, but under the Board's decision these travel agents, who are the legal agents of the scheduled carriers, will become their direct competitors.

The Board finds that, in any event, diversion will be *de minimis* and, in view of the high current earnings of the scheduled carriers, they can withstand the impact of uncontrolled entry and unregulated point-to-point competition. There is no basis in the record for this finding and such a conclusion is contrary to the regulatory scheme irrespective of the amount of diversion.

Assuming, *arguendo,* that all-expense tours by tour operators are legal, then before the Board could properly determine that authorizations should issue, a proceeding similar to that of the *Air Freight Forwarder Case,* 9 C. A. B. 473 (1948) is required. In that case 78 identified applicants each sought specific authority to engage as indirect air carriers in the transportation of property. These applicants submitted full and complete plans of proposed

operations and submitted evidence of the need for such authority. As a result the Board was able to make an intelligent determination as to whether the public interest required airfreight forwarders. The *Air Freight* case was a thoroughly threshed-out adjudicatory proceeding. In the case herein the Board does not know the identity of the applicants, the plan of operations, if a need exists for such service, or whether it is in the overall public interest.

These matters are even more important here than in the case of the forwarders since the tour operators will be the principals and, in effect, the actual operators of the aircraft. Airfreight forwarders do not operate aircraft, determine the points to be served, or the frequency of operation. Before the Board issues authority by exemption to indirect carriers it must make findings of public interest and

public need.[13] The Board is here unable to make such findings. Moreover, it can scarcely circumvent the illegal action or supply the missing evidence by labeling its course experimental or developmental.

Under the Board's decision any one, including existing travel agents, can qualify as a tour operator merely by filing a statement of qualifications. There are no substantive standards set forth by which the Board can measure qualifications. Therefore, presumably any one filing a statement is qualified and it would appear that the Board must issue an authorization since it has retained no discretion.[14] Obviously, an evidentiary hearing is necessary. Without an investigation, with known applicants, the Board has relinquished its statutory authority and opened the door to uncontrolled entry and wasteful competition.

/s/ WHITNEY GILLILLAND

11783

APPENDIX I

Ex Parte No. MC-29-(Sub-No. 1)

APPENDIX

I. *Revised regulations relating to special operations applications and certificates proposed by the National Bus Traffic Association*

(a) All Applications for Special Operations Certificates, pursuant to the provisions of Section 207(a) of the

[13] Federal Aviation Act of 1958. Sec. 416(b). (72 Stat. 771, 49 U. S. C. 1386.)

[14] New Part 378, Subpart B, sec. 378.11(d).

Interstate Commerce Act, for authority to transport passengers in "Round-Trip Sightseeing or Pleasure Tours" on a territorial, State, county, area, or regional basis, shall specifically set forth the service proposed as follows:

"* * * the transportation of passengers and their baggage, in Special Operations limited to Round-Trip, Sightseeing or Pleasure Tours designed for leisurely travel, as distinguished from expeditious point-to-point transportation, subject to all of the following requirements:

(1) Each such Tour must include:

(i) sightseeing stops en route or stops at points or events of interest en route, and

(ii) an overnight stop every night during the entire tour, and

(2) On each such Tour the passengers must:

(i) maintain their identity as a group for the duration of the tour, and

(ii) engage in some group activities that are organized, supervised and controlled by the carrier, and

(iii) be accompanied by a tour conductor or guide (who may be the driver of the vehicle qualified to act as a tour conductor or guide), and

(3) The price of each such Tour must include all of the following elements:

(11783, 11784)

(i) some of the meals, and

(ii) lodging for each night during the entire tour, and

(iii) admission fees to any points or events of interest visited for which a fee is charged, and

11784

(iv) the cost of transportation."

(b) All Applications for Special Operations Certificates which are not expressed in the exact language used in Paragraph (a) shall specify with particularity the specific points of origin and destination by name and not on a territorial, State, county, area, or regional basis.

(c) Every Applicant for a Special Operations Certificate shall be required to prove public convenience and necessity for the specific authority sought, and in the case of Applications not expressed in the exact language used in Paragraph (a), shall be required to prove that public convenience and necessity requires service from, to, and between each origin and destination named in the Application.

(d) Any Special Operations Certificates issued by the Commission pursuant to such Applications shall specify the conditions and limitations set out in Paragraphs (a) or (b) in order to prevent the establishment of Regular-Route Service under such Special Operations Certificates.

II. *Definition of "special operations" proposed by Manhattan Transit Co. et al.*

Definition of "special operations". Operations of motor common carriers of passengers shall be deemed to be "special operations" when they are called "special operations" in a certificate of public convenience and necessity issued by this Commission or when the certificate holder is authorized to perform any of the following:

1. Service in sightseeing or pleasure tours.
2. Service in religious pilgrimages to shrines or other places of worship.
3. Non-scheduled service to and from seashore and other pleasure and health resorts.
4. Service to and from air ports.
5. Door-to-door non-scheduled service.
6. Service limited to the transportation of no more than a certain number of passengers in a single vehicle.
7. Any other service designated for a limited or particular purpose.

(11786)

11786

Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Southern Air Transport, Inc., Trans International Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal

of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on May 13, 1966.

3. That the record in this proceeding be and it hereby is reopened for further hearing at a time and place hereinafter to be designated on the qualifications for supplemental air transportation of Overseas National Airways, Inc., Standard Airways, Inc., and Vance International Airways, Inc.

4. That the interim certificates and interim authority of the supplemental air carriers listed in paragraph 1 hereof shall terminate upon the effectiveness of the certificates issued hereunder: *Provided, however,* That the interim authority now held by such carriers to engage in overseas and foreign air transportation and in air transportation between places in the same territory or possession shall continue in effect until further order of the Board.

11787

5. That the interim certificates and interim authority of the carriers listed in paragraph 3 of this order shall continue in effect until further order of the Board.

6. That, except to the extent otherwise indicated, the motion filed on September 20, 1965, by Overseas National Airways be and it hereby is denied; and that the motion filed on September 27, 1965, by World Airways be and it hereby is dismissed.

7. That all applications consolidated herein for supplemental certificates, except insofar as such applications seek authority for overseas and/or foreign air transportation

(11787)

and/or air transportation between places in the same territory or possession, heretofore filed by Conner Air Lines, Inc., Holiday Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc., be and they hereby are denied, and that decision upon such applications, insofar as not denied, by this paragraph, be and it hereby is deferred until further order of the Board.

8. That decision on the applications of Overseas National Airways, Standard Airways, and Vance International Airways be and it hereby is deferred until further order of the Board.

9. That, except to the extent otherwise indicated, all applications consolidated in this proceeding, except insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession of the United States filed by the carriers listed in paragraph 1 of this order, be and they hereby are denied; and that decision upon such applications, insofar as not denied by this paragraph or hereinabove granted, be and it hereby is deferred until further order of the Board.

10. That there be and hereby are adopted and issued concurrently herewith regulations of the Board designated Part 378 of the Special Regulations and amended regulations of the Board designated Part 208 of the Economic Regulations, which are attached hereto and made a part hereof, and which shall be effective on May 13, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

11788

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

(11788, 11789)

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11789

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11790

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

(11790, 11791)

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11791

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11792

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

JOHNSON FLYING SERVICE, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11793

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11794

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

MODERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11795

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

(11796)

11796

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

PURDUE AERONAUTICS CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii,

(11796, 11797)

on the other hand, shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11797

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11798

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

(11798, 11799)

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11799

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11800

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SOUTHERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

(11800, 11801)

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11801

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11802

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the

rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11803

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11804

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and

compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11805

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11806

Issued pursuant to
Order No. E-23350

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

ZANTOP AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

> Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

> (1) Charter services performed by the holder for the Department of Defense between points in the contiguous 48 states, on the one hand, and Alaska and Hawaii, on the other hand, shall be furnished at the rates and compensation computed on a basis no lower than the

basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(2) Nothing in this certificate shall be construed as authorizing air transportation within the State of Alaska.

(3) The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

11807

This certificate shall be effective on May 13, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-23350), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authorization to operate inclusive tour charters in accordance with the provisions of Part 378 of the Special Regulations shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

11808

Regulation No. SPR-14

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Special Regulations
Enactment of Part 378
Effective: May 13, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

By Notice of Proposed Rule Making, SPDR-6, dated January 5, 1965, and published in 30 F. R. 281, the Board gave notice that it had under consideration (1) the amendment of the interim certificates and interim operating authorizations of supplemental air carriers who the Board finds qualified to perform all-expense-paid (inclusive) tours in interstate and overseas air transportation, and (2) the promulgation of a new Part 378 of the Board's Special Regulations to authorize, subject to the conditions provided therein, inclusive tours by tour operators with the air transportation portion thereof provided by the supplemental air carriers. In response to this notice, comments were submitted by twelve trunkline air carriers,[1] three local

[1] A joint comment was filed by American Airlines, Braniff Airways, Continental Air Lines, Delta Air Lines, Eastern Air Lines, National Airlines, Northwest Airlines, Pan American World Airways, Trans World Airlines, United Air Lines, and Western Air Lines. In addition, Northwest Airlines filed a supplemental comment and Northeast Airlines submitted a separate comment.

service carriers,[2] three other route carriers,[3] twelve supplemental carriers,[4] one foreign air carrier,[5] seven travel agencies (including travel agents' associations),[6] four labor unions,[7] six government agencies,[8] and two private Hawaiian associations.[9] In addition, reply comments were filed by eleven trunkline carriers,[10] eight supplemental carriers,[11]

---

[2] Bonanza Air Lines, Lake Central Airlines, and Trans-Texas Airways.

[3] Aloha Airlines, Hawaiian Airlines, and Trans Carribean Airways.

[4] AAXICO Airlines, American Flyers Airline, Capitol Airways, Modern Air Transport, Overseas National Airways (ONA), Purdue Aeronautics, Saturn Airways, Trans International Airlines (TIA), Vance Roberts, World Airways and Zantop Air Transport. A comment was also filed by Holiday Airways, a supplemental carrier which, unlike the others, lacked interim operating authority.

[5] Japan Air Lines.

[6] American Society of Travel Agents (ASTA), Camino Tours; Creative Tour Operators Association (CTOA), Fugazy Travel Bureau, Happiness Tours, Lafayette Travel Service, and Pan American Tours.

[7] Master Executive Councils of Pilots of Eastern Air Lines, etc.; United Public Workers of Honolulu; Hotel, Restaurant Employees and Bartenders Union (Local No. 5, Honolulu); and International Association of Machinists (Honolulu Lodge).

[8] Port of New York Authority; Board of Supervisors of County of Maui, Hawaii; Board of Supervisors of County of Hawaii, Hawaii; Senate and House of the State of Hawaii; Council of City and County of Honolulu; and Department of Attorney General, State of Hawaii.

[9] Hawaii Hotel Association and Hawaii Restaurant Association.

[10] A joint reply by the same carriers which filed a joint comment (see footnote 1, *supra*).

[11] The same supplementals which filed comments, minus Modern, Purdue, Zantop and Holiday (see footnote 3, *supra*).

one foreign air carrier,[12] two travel agents' associations,[13] one union,[14] and one government agency.[15]

11810

After further consideration, the Board decided (Supplemental Notice of Proposed Rule Making, SPDR-6A, April 27, 1965, 30 F. R. 6119) to defer further action in the rule making proceeding until after issuance of the examiner's Recommended Decision in the *Supplemental Air Service Proceeding,* Docket 13795 *et al.*

By Supplemental Notice of Proposed Rule Making, SPDR-6B, dated October 11, 1965, and published in 30 F. R. 13077, the Board amended proposed Part 378 to correspond with the scope of inclusive tour authority which might be granted as a result of the *Supplemental* case and/or the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase),* Docket 11908, *et al.* The amendments primarily involved (1) making the period of tour operator authorization coextensive with that awarded to supplemental carriers, and (2) extending the regulatory terms to include inclusive tours in foreign, as well as interstate and overseas, air transportation. Comments with respect to the amendments were filed by eleven trunkline air carriers,[16] three supplemental carriers,[17] and two travel agents (or associations).[18]

---

[12] Japan Air Lines.

[13] ASTA and CTOA.

[14] Master Executive Councils of Pilots of Eastern Air Lines, etc.

[15] St. Louis Airport Commission.

[16] Again, a joint comment by the carriers listed in footnote 1.

[17] TIA, World and Zantop.

[18] CTOA and American International Travel Service.

(11810, 11811)

Interested persons have been afforded an opportunity to participate in the making of this rule, and due consideration has been given to all relevant matter presented. In view of the interrelationship between the rule making and

11811

the *Supplemental* case with respect to the inclusive tour question, and because Part 378 is being issued in conjunction with the decision in the domestic phase of the latter proceeding, the discussion of the regulatory provisions as adopted, which normally accompanies the rule, is contained in the *Supplemental* opinion.[19] For the reasons set forth therein, we have decided to adopt the attached new Part 378 of the Board's Special Regulations.

Accordingly, the Civil Aeronautics Board hereby amends the Special Regulations, effective May 13, 1966, by adding thereto a new Part 378 (14 CFR Part 378) to read as follows:

Part 378—Inclusive Tours by Supplemental Air Carriers and Tour Operators

Subpart A—General Provisions

Sec.

378.1 Applicability.
378.2 Definitions.
378.3 Exemption.
378.4 Approval of certain interlocking relationships.
378.5 Effect of exemption on antitrust laws.
378.6 Suspension of exemption authority.

[19] Order E-23350, March 11, 1966, pp. 16-21.

SUBPART B—CONDITIONS AND LIMITATIONS

Sec.
378.10 Requirement of a Statement of Authorization.
378.11 Procedure for obtaining a Statement of Authorization.
378.12 Statement of Tour Operator's Qualifications.
378.13 Tour Prospectus.
378.14 Charter contract.
378.15 Tariffs to be filed for charter trips.
378.16 Surety bond.
378.17 Contract between tour operators and tour participants.
378.18 Procedure applicable to periods on or after January 1, 1968.

11812

SUBPART C—POST TOUR REPORTING REQUIREMENTS

378.20 Post tour reporting.

SUBPART D—MISCELLANEOUS

378.30 Waiver.
378.31 Enforcement.

Authority: Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended (72 Stat. 737; 49 U. S. C. 1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C. 1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).

(11812, 11813)

SUBPART A—GENERAL PROVISIONS

§378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

§378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in interstate air transportation on inclusive tours.

11813

(b) "Inclusive tour" means a round-trip tour which combines air transportation pursuant to an inclusive tour charter and land services, and which meets all of the following requirements:

(1) A minimum of seven (7) days must elapse between departure and return;

(2) The land portion of the tour must provide overnight hotel accommodations at a minimum of three places other than the point of origin, such places to be no less than 50 air miles from each other;

(3) The tour price shall include, at a minimum, all hotel accommodations and necessary air or surface transportation between all places on the itinerary including transportation to and from air and surface carrier terminals utilized at such places other than the point of origin;

(4) The charge to the passengers for the tour, as set forth in the tour prospectus, shall be not less than 110 per cent of any available fare or fares charged by a certificated route air carrier or combination of such carriers (including charge for stopovers) for individually ticketed service on the circle route beginning at the point of origin, to the various points where stopovers are made, and return to the point of origin, provided that the tour shall be subject to the terms and conditions which are applicable to such fare or fares, as set forth in the tariff of the certificated route carrier or carriers. For purposes of this provision, the term "available fare" includes promotional or discount fares, such as family fares, children's fares, excursion fares, fares applicable to special classes of persons, group fares, etc. Where similar promotional or discount fares are offered on both jet and propeller aircraft, the avail-

able fare shall be that charged for jet service. Where no regularly scheduled service is provided between the points

involved, the available fare shall be based on the fares to the nearest point served by a certificated route air carrier; and

(5) An aircraft under charter to one tour operator may carry a maximum of three tour groups, provided that if more than one group is carried each of the groups shall consist of 40 or more tour participants.

(c) An "inclusive tour group" means an aggregate of persons who are assembled by a tour operator for the purpose of participation as a single unit in an inclusive tour.

(d) "Tour operator" means any person (other than a supplemental air carrier) authorized hereunder to engage in the formation of groups for transportation on inclusive tours.

(e) "Tour participant" means a member of the inclusive tour group.

(f) "Supplemental air carrier" means a supplemental air carrier as defined in §200.8 of the Board's Economic Regulations and authorized under section 7 of Public Law 87-528 or section 401(d) (3) of the Act to perform inclusive tour charters.

(g) "Tour price" means the total amount of money paid by the tour participant to the tour operator for the inclusive tour.

11815

§378.3 *Exemption.*

Subject to the provisions of this part and the conditions imposed, tour operators are hereby relieved from the fol-

lowing provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit them to provide inclusive tours:

Section 401
Section 403
Section 404(a), except the requirement to provide safe and adequate service, equipment and facilities in connection with tours operated hereunder.
Section 405(b)
Section 407(b) and (c)
Sections 408(a) and 409, except control or interlocking relationships with direct air carriers
Section 412

§378.4 *Approval of certain interlocking relationships.*

To the extent that any officer or director of a tour operator would be in violation of any of the provisions of section 409(a)(3) and (6) by participating in interlocking relationships covered by the exemption granted by §378.3, such participation is hereby approved by the Board.

§378.5 *Effect of exemption on antitrust laws.*

The relief granted by §§ 378.3 and 378.4 from sections 408, 409 and 412 of the Act shall not constitute an order under such sections within the meaning of section 414 of the Act, and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

§378.6 *Suspension of exemption authority.*

The Board reserves the power to suspend the exemption authority of any tour operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

SUBPART B—CONDITIONS AND LIMITATIONS

§378.10 *Requirement of a Statement of Authorization.*

No inclusive tour or series of tours scheduled to commence on or before December 31, 1967, shall be operated, nor shall any tour operator sell or offer to sell, solicit, or advertise such tour or tours, unless there shall be in effect a Statement of Authorization issued by the Board authorizing the specific tour or series of tours.

§378.11 *Procedure for obtaining a Statement of Authorization.*

(a) Applications for a Statement of Authorization shall be filed with the Civil Aeronautics Board (Director, Bureau of Operating Rights) jointly by the supplemental air carrier and the prospective tour operator at least 90 days in advance of the date of commencement of the proposed tour or series of tours. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the application may cover the entire series, provided that the elapsed time between the commencement of the first tour and the completion of the last tour shall not be more than 180 days. Late filing of the application will not be permitted except for good cause shown.

(b) The application shall be verified, in the form set forth in the Appendix, by a duly authorized officer of both the

11817

supplemental air carrier and the tour operator and shall include the Statement of Tour Operator's Qualifications and the Tour Prospectus. In the event of any change in the facts as reflected in the application, an amended application shall be filed no later than five (5) days following such change.

(c) Copies of the application shall be served upon each direct air carrier certificated to provide passenger service between any of the points involved in the proposed tour or tours, and on such other persons as the Board may require, and proof of such service shall accompany the application as provided in §302.8 of this chapter. Answers to the application may be filed by interested persons no later than ten days thereafter and shall conform to the requirements of §302.1022(a) and (b) of this chapter.

(d) If the Board finds that the proposed tour or tours comply with the requirements of this regulation and that the tour operator applicant is properly qualified, it will issue a Statement of Authorization for the conduct of the tour or tours set forth in the application. Among the factors which the Board will consider in determining whether the tour operator applicant is properly qualified to engage in the proposed tour operation are its financial resources, prior experience in the transportation business, and any other information bearing upon the ability of the applicant to perform successfully the proposed operations. The Statement of Authorization may be conditioned or limited by the

Board in order to assure compliance with the requirements of this regulation.

(e) Deviations from the tour or tours authorized by the Board may not be made without Board permission except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to request Board permission therefor.

§378.12 *Statement of Tour Operator's Qualifications.*

The Statement of Tour Operator's Qualifications shall be in the form set forth in the Appendix. A tour operator who has filed a Statement of Tour Operator's Qualifications

in connection with one application may, with respect to subsequent applications, file a verified statement to the effect that the facts contained in his previously filed Statement of Qualifications have not changed, except as set forth in such verified statement.

§378.13 *Tour Prospectus.*

The Prospectus shall include copies of the charter contract, the contract between the tour operator and tour participants, and the tour operator's surety bond, and shall contain the following information:

(a) Name and address of the tour operator;

(b) The proposed date and time of each flight;

(c) Equipment to be used, including the aggregate number of each type of aircraft and capacity;

(d) The tour itinerary, including hotels (name and length of stay at each), and sightseeing or other arrangements, if any;

(e) The tour price per passenger;

(f) The number of persons expected to participate in the tour;

(g) Charter price of the aircraft;

(h) The individually ticketed air fare, computed, as provided in §378.2(b)(4);

(i) Samples of solicitation material proposed by the tour operator (all sales advertising and solicitation materials employed by the tour operator shall state the name of the supplemental air carrier to be utilized).

11819

§378.14 *Charter contract.*

The charter contract between the tour operator and the supplemental carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the tour or tours covered by the contract.

§378.15 *Tariffs to be filed for charter trips.*

No supplemental air carrier shall perform any charter trips for inclusive tours unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

(11819, 11820)

§378.16 *Surety bond.*

The tour operator shall furnish a surety bond in an amount of not less than twice the amount of the charter price for the air transportation to be furnished in connection with such tour: *Provided, however,* That the liability of the surety to any tour participant shall not exceed the tour price. Such bond shall insure the financial responsibility of the tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator and the tour participants, and shall be in the form set forth in the Appendix. Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the state in which the tour originates. For purposes of this section, the term "state" includes any territory or possession of the United States, or the District of Columbia. The Board will consider that a bonding or surety

11820

company is *prima facie* qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR §174.8, and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the supplemental air carrier and the tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set

forth in such notification, the subject tour or tours shall in no event be operated.

§378.17 *Contract between tour operators and tour participants.*

Where each participant in a tour receives the same accommodations, land tours, etc., the contract between the tour operator and the tour participants shall be the same. Contracts between tour operators and tour participants shall include provisions concerning the following matters:

(a) Method of payment, e.g., installment payments;

(b) Refunds in the event of the tour's cancellation or the passenger's change in plans;

(c) Carriers' liability limitations for passengers' baggage;

(d) Aircraft equipment substitutions;

(e) Seating accommodations; and

(f) Non-performance of tour because of insufficient number of participants.

11821

§378.18 *Procedure applicable to periods on or after January 1, 1968.*

(a) No inclusive tour or series of tours scheduled to commence on or after January 1, 1968, shall be operated, nor shall any tour operator sell or offer to sell, solicit or advertise such tour or tours, unless there is on file with the Board a Tour Prospectus satisfying the requirements of §378.13. If a series of tours is to be operated for one tour

operator pursuant to one charter contract, the Prospectus may cover the entire series, provided the elapsed time between the commencement of the first tour and the completion of the last tour shall not be more than 180 days. The Tour Prospectus shall be verified by a duly authorized officer of both the supplemental air carrier and the tour operator and shall be filed at least 60 days before the commencement of the tour or tours. Late filing of the Prospectus will not be permitted except for good cause shown.

(b) In the event of any change in the facts as reflected in the Prospectus, an amended Prospectus shall be filed no later than five (5) days following such change. Deviations from the Tour Prospectus, or the amended Prospectus, may not be made except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to file an amended Prospectus.

SUBPART C—POST TOUR REPORTING REQUIREMENTS

§378.20 *Post tour reporting.*

(a) Within 30 days after completion of a tour or in the case of a series of tours, the last of the series, the supple-

11822

mental air carrier and tour operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights) a post tour report. This report shall be verified by both the supplemental air carrier and the tour operator and shall indicate whether or not the tours as authorized hereunder were, in fact, performed. To the

extent that the operations differed from those authorized under §378.11 or described in the Prospectus filed under §378.18, such differences shall be fully detailed including the reasons therefor. However, the making of such explanation shall not of itself operate as authority for or excuse of any such deviation.

(b) The supplemental air carrier shall promptly notify the Board regarding any tours covered by a Statement of Authorization, or a Tour Prospectus filed under §378.18, that are later canceled.

SUBPART D—MISCELLANEOUS

§378.30 *Waiver.*

A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a supplemental air carrier of a written request therefor, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§378.31 *Enforcement.*

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued

under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a United States District Court, as the case may be, to compel compliance therewith, to civil penalties pur-

(11823)

suant to the provisions of section 901(a) of the Act, or, in the case of willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

11824

APPENDIX

VERIFICATION OF APPLICATION UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 378)

STATE OF .....)
COUNTY OF .....) SS:

..... and .....
(Name) (Name)

being duly sworn, hereby separately depose and say that I have carefully examined the attached application for a Statement of Authorization to engage in inclusive tour charters, and each of the documents comprising such application (Statement of Tour Operator's Qualifications and Tour Prospectus) and that to the best of my knowledge and belief the information contained therein is true and correct.

.....	.....
(Signature and title of duly authorized official of the supplemental air carrier)	(Signature and title of duly authorized official of the tour operator)
Sworn to before me this day, the ..... of ....., 19....	Sworn to before me this day, the ..... of ....., 19....
.....	.....
(Signature of person administering oath. Also, set forth here below the name, address and authority of such person)	(Signature of person administering oath. Also set forth here below the name, address and authority of such person)

(11825)

11825

STATEMENT OF TOUR OPERATOR'S QUALIFICATIONS UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 378)

1. Identification of tour operator applicant:

   (a) Name: .....

   (b) Trade names: .....

   (c) Name in which applicant wishes to be issued the Statement of Authorization: .....

2. Address of principal office: .....

3. Mailing address: .....

4. Form of organization:

   [ ] Corporation [ ] Sole Proprietorship
   [ ] Partnership [ ] Other (Specify):

   .....

5. State in which incorporated or under whose laws company is authorized to operate: .....

6. Date of incorporation or formation of company: .....

   .....

7. Full name, address, title, citizenship (country) and percent of stock or other interes' of officers, owners, or members of applicant, and owners of more than 5% of outstanding stock of corporation or owners of more than 5% of company if other than corporation: .....

   .....

   .....

(11825, 11826)

8. Full name, address, citizenship (country) and percent of stock or other interest of directors of applicant: .....

.....

.....

9. Percent of voting interest owned or controlled by citizens of the United States or one of its possessions:

[ ] 75% or more [ ] Less than 75%

11826

10. If more than 5 percent of applicant's stock is held by a corporation, percent of voting interest in such corporation owned or controlled by citizens of the United States or one of its possessions:

[ ] 75% or more [ ] Less than 75%

11. Description of current business activities and length of time engaged therein: .....

.....

.....

12. Description of previous business experience related to transportation activities and dates engaged therein:

.....

.....

.....

13. Kind of operating authority (such as broker, surface or air freight forwarder, motor carrier, ocean freight forwarder, etc.) issued to applicant by the United States Government, including (a) permit, registration

(11826, 11827)

or certificate number, or other evidence of registration, (b) issuing agency, and (c) effective dates of license held: .....

.....

.....

.....

14. Has any operating authority or registration included in item 13, above, been revoked, canceled, suspended or otherwise terminated?

[ ] Yes [ ] No

If "yes", give reasons: .....

.....

15. Description of previous business experience of applicant's officers, managers and key personnel in air transportation or other transportation:

.....

.....

.....

11827

16. State any additional information or comments as desired in support of the application: .....

.....

17. Give a brief account of any arrangement through which applicant will have available to it the financial resources and facilities of other companies or individuals: .....

.....

.....

18. Submit with this statement, in duplicate, the most recent balance sheet of applicant. Use footnotes to *explain items fully,* in order to avoid time-consuming correspondence for explanation of balance sheet entries.

11828

TOUR OPERATOR'S SURETY BOND
UNDER PART 378 OF THE SPECIAL REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 378)

KNOW ALL MEN BY THESE PRESENTS, That we ....., of ....., ... as PRINCIPAL (hereinafter called Principal), and .....
(Name of tour operator) (City) (State) (Name of Surety)
a corporation created and existing under the laws of the State of ..... as SURETY (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of ....., for
(State) (see §378.16 of Part 378)
which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal intends to become a tour operator pursuant to the provisions of Part 378 of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure finan-

(11828, 11829)

cial responsibility and the supplying of transportation and other services subject to Part 378 of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

WHEREAS, this bond is written to assure compliance by the Principal as an authorized tour operator with Part 378 of the Board's Special Regulations, and other rules and

11829

regulations of the Board relating to insurance or other security for the protection of tour participants, and shall inure to the benefit of any and all tour participants to whom the Principal may be held legally liable for any of the damages herein described.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay or cause to be paid to tour participants any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Part 378 of the Board's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any tour participant shall not exceed the tour price (as defined in Part 378 of the Board's Special Regulations) paid by or on behalf of such participant.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the ..... day of ....., 19....., 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the

11830

Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D. C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

(11830)

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument on the ..... day of ...., 19 .....

PRINCIPAL	SURETY
Name	Name .....(SEAL)
By ..... (Signature and Title)	By ..... (Signature and Title)
Witness	Witness .....

Only corporations may qualify to act as surety and they must establish to satisfaction of the Civil Aeronautics Board legal authority to assume the obligations of surety and financial ability to discharge them.

11831

Regulation No. ER-454

UNITED STATES OF AMERICA.
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations
Revision of Part 208
Effective: May 13, 1966
Adopted: March 11, 1966

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

REVISION OF PART

Present Part 208, as amended, contains principally various terms, conditions, and limitations on the operating authority of supplemental air carriers. Such terms, conditions, and limitations attach to certificates issued pursuant to section 401(d)(3) of the Act, to special operating authorizations issued under section 417 of the Act and to interim certificates or authorizations issued pursuant to section 7 of Public Law 87-528.

In its decision in the domestic phase of the *Supplemental Air Service Proceeding,* Docket 13795 *et al.,* dated March 11, 1966, Order E-23350, the Board granted certificates of public convenience and necessity to certain supplemental air carriers under section 401(d)(3) of the Act to engage in supplemental air transportation with respect to persons

(11831, 11832)

and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia for an indefinite period;[1] authorized split charters; and provided that the authority granted would be subject to appropriate terms, conditions and limitations.[2] Consequently, we have determined to amend Part 208 to reflect

11832

the authorization of split charters and to set forth those terms, conditions and limitations which also will govern the conduct of certificated supplemental air transportation (other than transatlantic supplemental air transportation and inclusive tour charters).

The issue of the appropriate terms, conditions and limitations which the Board should adopt to govern certificated supplemental air transportation, was embraced by and litigated in this proceeding. Thus, the Board's consolidation order (E-20573, March 13, 1964) indicated that the issues would include a determination of what limitations, if any, should be imposed by the Board to assure that the service rendered pursuant to any certificate to be issued would be limited to supplemental air transportation as defined in the Act. The examiner, after considering the evidence, contentions and briefs of the parties, attached to his recommended decision (Appendix F) a set of comprehensive regulations which he recommended that the Board adopt to implement the decision, including a revised Part 208

[1] Except with respect to the authorization to operate inclusive tour charters which is for five years.

[2] The authority to operate inclusive tour charters is subject to the terms, conditions and limitations set forth in new Part 378 issued concurrently with Board Order E-23350, dated March 11, 1966.

setting forth the terms, conditions and limitations for the conduct of certificated supplemental air transportation. We have considered the examiner's proposed regulations and the evidence of record and have determined to adopt most of his recommendations (with the exception of those provisions pertaining to inclusive tour charter authority which we are issuing as a separate regulation). This revised Part 208 will bring together in one regulation all of the terms, conditions and limitations which we deem appropriate to govern supplemental air transportation. Although the regulation we are issuing as a part of Board Order E-23350 differs to some extent from that proposed

by the examiner, the differences are largely a matter of form.[3] Moreover, the provisions of this revised Part 208 are, for the most part, reflected in existing Part 208, in the interim certificates of the supplemental air carriers and, with appropriate adaptations and modifications, in existing Part 295, the regulation which pertains to transatlantic supplemental air transportation.

In addition, the provisions of revised Part 208 were the subject of intensive examination and argument by the parties. The interested parties have, therefore, been afforded a full opportunity to comment on the substance of this rule in the above-described proceeding.

In view of the foregoing, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest. Accordingly, the Civil Aero-

[3] See p. 28 of the Board's opinion which discusses the instant Part 208 revision.

nautics Board hereby reissues Part 208 of the Economic Regulations (14 CFR Part 208), effective May 13, 1966, as follows:

11834

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

SUBPART A—GENERAL PROVISIONS

Sec.
208.1 Applicability.
208.2 Separability.
208.3 Definitions.
208.3a Waiver.
208.4 Passenger names and addresses.

Liability Insurance Requirements

208.10 Applicability of liability insurance requirements.
208.11 Minimum limits of liability.
208.12 Terms and conditions of insurance coverage.
208.13 Authorized exclusions of liability.
208.14 Filing of certificates, endorsements and notices.
208.15 Compliance.

Minimum Extent of Service

208.25 Minimum service requirements.

Operations and Tariffs

208.30 Prohibited advertising.
208.31 Prohibited control of a supplemental air carrier.
208.31a Written agreements with ticket agents.

Sec.
208.32 Tariffs and terms of service.
208.33 Flight delays and substitute air transportation.

11835

208.33a Substitution or subcontracting.
208.34 Records and record retention.
208.35 Payments, gratuities and donations.

SUBPART B—PROVISIONS RELATING TO MILITARY CHARTERS

208.100 Applicability of subpart.
208.101 Minimum rates and compensation for air transportation performed for the military establishment.
208.102 Substitute service.

SUBPART C—PROVISIONS RELATING TO PRO RATA CHARTERS

208.200 Applicability of subpart.

Requirements Relating to Air Carriers

208.200a Solicitation and formation of a chartering group.
208.201 Pre-trip notification.
208.202 Agent's commission.

Requirements Relating to Travel Agents

208.203 Prohibition against double compensation.

11836

208.204 Statement of supporting information.

(11836)

Requirements Relating to the Chartering Organization

Sec.

208.210 Solicitation of charter participants.
208.211 Passengers on charter flights.
208.212 Participation of immediate families in charter flights.
208.213 Charter costs.
208.214 Statements of charges.
208.215 Passenger manifests.
208.216 Statement of supporting information.

SUBPART D—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

208.300 Applicability of subpart.
208.301 Tariffs to be on file.
208.302 Terms of service.
208.303 Commissions paid to travel agents.

SUBPART E—PROVISIONS RELATING TO MIXED CHARTERS

208.400 Applicable rules.

Authority: §§208.1 to 208.400 issued under sec. 204(a), 72 Stat. 743; 49 U. S. C. 1324. Interpret or apply secs. 401(d)(3), 401(n), 407 and 417 of the Federal Aviation Act, 76 Stat. 143; 49 U. S. C. 1371(d)(3); 76 Stat. 144; 49 U. S. C. 1371(n); 72 Stat. 766; 49 U. S. C. 1377; 76 Stat. 145; 49 U. S. C. 1387; and sec. 7 of Public Law 87-528, 76 Stat. 146.

SUBPART A—GENERAL PROVISIONS

§208.1 *Applicability.*

This part contains terms, conditions, and limitations on the operating authority of supplemental air carriers, including substantive regulations implementing paragraphs (1), (2), (3) of section 401(n) of the Act. The requirements of this part shall constitute terms, conditions, and

limitations attached to certificates issued pursuant to section 401(d)(3) of the Act. The requirements shall also attach to special operating authorizations issued under section 417 of the Act, and to interim certificates or authorizations issued pursuant to section 7 of Public Law 87-528.

§208.2 *Separability.*

If any provision of this part or the application thereof to any air transportation, person, class of persons, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§208.3 *Definitions.*

For the purposes of this part:

(a) "Filing" shall mean filing in compliance with §302.3(a) of this chapter except that provisions in this part which require filing with Board offices other than the Docket Section shall be controlling.

(11837, 11838, 11839)

(b) "Supplemental air carrier" shall mean any air carrier holding a certificate issued under section 401(d)(3) of the Federal Aviation Act of 1958, as amended, or a special operating authorization issued under section 417 of the Federal Aviation Act, or operating authority issued pursuant to section 7 of Public Law 87-528.

(c) "Supplemental air transportation" (other than operations subject to Part 295 of this subchapter) means charter flights in air transportation performed pursuant to (1) an interim certificate or authorization issued under section 7 of Public Law 87-528, or (2) a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supple-

11838

mental air transportation of persons and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia (exclusive of air transportation within the State of Alaska).

(d) "Agreement" means any oral or written agreement, contract, understanding, or arrangement, and any amendment, revision, modification, renewal, extension, cancellation or termination thereof.

11839

(e) "Cargo agent" means any person (other than a supplemental air carrier or one of its *bona fide* regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the Economic Regulations of the Board) who

for compensation or profit (i) solicits, obtains, receives, or furnishes directly or indirectly property or consolidated shipments of property for transportation upon the aircraft of supplemental air carriers; or (ii) procures or arranges for air transportation of property or consolidated shipments of property upon aircraft of a supplemental air carrier by charter, lease, or any other arrangement.

(f) Reserved.

(g) "Ticket agent" means any person (other than a supplemental air carrier or one of its *bona fide* regular employees) who for compensation or profit (i) solicits, obtains, receives, or furnishes directly or indirectly passengers or groups of passengers for transportation upon the aircraft of a supplemental air carrier; or (ii) procures or arranges for air transportation of passengers or groups of passengers upon aircraft of a supplemental air carrier by charter, lease, or any other arrangement.

(h) "Pro rata charter" means a charter, the cost of which is divided among the passengers transported.

(i) "Single entity charter" means a charter, the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

(j) "Mixed charter" means a charter, the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

11840

(k) "Person" means any individual, firm, association, partnership, or corporation.

(11840)

(l) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(m) "Charter group" means that body of individuals who shall actually participate in the charter flight.

(n) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived.

(o) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(p) "Solicitation of the general public" means:

(1) A solicitation going beyond the bona fide members of an organization (and their immediate families). This includes air transportation services offered by an air carrier under circumstances in which the services are advertised in mass media, whether or not the advertisement is addressed to members of a specific organization, and regardless of who places or pays for the advertising. Mass media shall be deemed to include radio and television, and newspapers and magazines. Advertising in such media as newsletters or periodicals of membership organizations, industrial plant newsletters, college radio stations and college newspapers shall not be considered advertising in mass media to the extent that

(i) The advertising is placed in a medium of communication circulated mainly to members of an organization that would be eligible to obtain charter service, and

(ii) The advertising states that the charter is open only to members of the organization referred to in subdivision (i) of this subparagraph, or only to members of a subgroup thereof. In this context, a subgroup shall be any group with membership drawn primarily from members of the organization referred to in subdivision (i) of this subparagraph: *Provided,* That this paragraph shall not be construed as prohibiting air carrier advertising which offers charter services to bona fide organizations, without reference to a particular organization or flight.

(2) The solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

(q) "Bona fide members" means those members of a charter organization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public. Presumptively persons are not bona fide members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a study group. In the case of all other

charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

11842

(r) Reserved.

(s) "Charter flight" (other than transportation pursuant to authority conferred under section 7 of Public Law 87-528) means

(1) air transportation of persons and/or property pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department, and

(2) air transportation performed by a direct air carrier on a time, mileage or trip basis where

(i) the entire capacity of one or more aircraft has been engaged for the movement of persons and property—

(*a*) By a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel or company property, or in cases of emergency, of commercial traffic);

(*b*) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons and/or their property, as agent or representative of such group;

(*c*) By two or more persons acting jointly for the transportation of themselves and/or their property or a group of persons and/or their property;

(*d*) By an indirect air carrier authorized by the Board to charter aircraft from such direct air carrier (see e.g., Part 378 of this chapter); or

(ii) less than the entire capacity of an aircraft has been engaged for the movement of persons and their personal baggage—

11843

(*a*) By a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel and their personal baggage, or in cases of emergency, of commercial passenger traffic);

(*b*) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons and their personal baggage, as agent or representative of such group;

(*c*) By two or more persons acting jointly for the transportation of themselves and their personal baggage or a group of persons and their personal baggage; *Provided* that, with respect to subdivision (ii) hereof, a maximum of three groups may be chartered on one aircraft and each group shall consist of 40 or more passengers; and *Provided, further,* that subdivision (ii) hereof shall not be construed to apply to movements of property and shall not be construed to apply to the charter of less than the entire capacity of an aircraft by an indirect air carrier.

In the case of air carriers authorized pursuant to section 7 of Public Law 87-528, the term "charter flights"

(11843, 11844)

means charter trips as defined in such carriers' interim certificates or authorizations.

A supplemental air carrier may utilize any unused space for the transportation of the carrier's own personnel and property, with the consent of the charterer or charterers.

11844

(t) "Substitute service" means the performance by an air carrier of air transportation between the 48 contiguous states, on the one hand, and the state of Alaska or Hawaii, on the other hand, in planeload lots pursuant to an agreement with another air carrier to fulfill such other air carrier's contractual obligation to perform such air transportation for the Department of Defense and when the performance of such air transportation is not to take place during a period longer than three weeks.

(u) "Indirect air carrier" means any citizen of the United States who engages indirectly in air transportation, including airfreight forwarders and tour operators.

§208.3a *Waiver.*

A waiver of any of the provisions of this part may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§208.4 *Passenger names and addresses.*

Each supplemental air carrier shall maintain a record of the names and addresses of all passengers transported

by it on each pro rata charter trip operated in interstate or overseas air transportation. Such record shall be re-

11845

tained in accordance with Part 249 except that it may be maintained at either the principal office or principal operations base of the carrier.

Liability Insurance Requirements

§208.10 *Applicability of liability insurance requirements.*

(a) No supplemental air carrier shall engage in air transportation unless such carrier has and maintains in effect liability insurance coverage evidenced by a currently effective certificate of liability insurance filed with and accepted by the Board as complying with the requirements of this part; and no supplemental carrier shall operate in air transportation any aircraft, or perform services within any geographical area, to which such insurance does not apply. "Insurance certificate," as used herein, means one or more than one certificate, evidencing one or more than one policy of aircraft liability insurance properly endorsed, issued by one or more than one insurer, which alone or in combination provides the minimum coverage prescribed in §208.11. When more than one insurer is involved in providing the minimum coverage prescribed herein, the limits and types of liability assumed by each insurer shall be clearly stated in the certificate of insurance.

11846

(b) The insurance coverage and certificate required by this part shall be obtained from a reputable and financially

responsible insurance company or association which is legally authorized to issue aircraft liability policies in one or more States of the United States or in the District of Columbia.

§208.11 *Minimum limits of liability.*

The minimum limits of liability insurance coverage maintained by a supplemental air carrier shall be as follows:

(a) Liability for bodily injury to or death of aircraft passengers: A limit for any one passenger of at least fifty thousand dollars ($50,000), and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying fifty thousand dollars ($50,000) by seventy-five percent (75%) of the total number of passenger seats installed in the aircraft.

(b) Liability for bodily injury to or death of persons (excluding passengers): A limit of at least fifty thousand dollars ($50,000) for any one person in any one occurrence, and a limit of at least five hundred thousand dollars ($500,000) for each occurrence.

(c) Liability for loss of or damage to property: A limit of at least five hundred thousand dollars ($500,000) for each occurrence.

§208.12 *Terms and conditions of insurance coverage.*

With respect to insurance required by this part:

(a) Insurance contracts shall provide for payment by the insurer on behalf of the insured supplemental air carrier, within the specified limits of liability, of all sums which the insured carrier shall become legally obligated

to pay as damages for bodily injury to or death of any person, or for loss of or damage to property of others, resulting from the negligent operation, maintenance or use of aircraft in air transportation by the insured carrier.

(b) The liability of the insurer shall apply to all operations by the insured carrier in air transportation. The liability of the insurer shall not be subject to any exclusion by virtue of violations, by the insured carrier, of any applicable safety or economic provision of the Federal Aviation Act of 1958, as amended, or Public Law 87-528; or of any applicable safety or economic rule, regulation, order, or other legally imposed requirement prescribed thereunder by the Federal Aviation Agency or the Civil Aeronautics Board, respectively.

(c) The liability of the insurer shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of the insured. The limits of the insurer's liability for the amounts prescribed herein shall apply separately to each occurrence, and any payment made under the policy because of any one occurrence shall not reduce the liability of the insurer for payment of other damages resulting from any other occurrence.

(d) Within the limits of liability herein prescribed, the insurer shall not be relieved from liability by any condition in the policy or any endorsement thereon, or violation thereof by the insured air carrier, other than the exclusions set forth in §208.13, or such other exclusions as may be individually approved by the Board. Cancellation of an approved policy shall be effected only upon written notice to the Board, in accordance with §208.14(d).

(11847, 11848)

(e) Except for the geographical exclusions authorized

11848

in §208.13(g) and (h), the coverage shall be worldwide. For good cause shown, however, the Board may waive this requirement or amend the certificate or other operating authority to describe the geographical areas actually served by the supplemental air carrier. Authority for any general restriction (e.g., North American continent, Western Hemisphere, etc.) shall be recited in any endorsement containing a general restriction.

§208.13 *Authorized exclusions of liability.*

Unless other exclusions are individually approved by the Board, no policy or certificate of insurance required by this part shall contain any exclusion other than the following authorized exclusions:

"The insurance afforded under this policy shall not apply to:

(a) Any loss against which the Named Insured has other valid and collectible insurance, except that the limits of liability provided under this policy shall be excess of the limits provided by such other valid and collectible insurance up to the limits certified in a Certificate of Insurance issued to the Civil Aeronautics Board in Washington, D. C., but in no event exceeding the limits of liability expressed elsewhere in this policy;

(b) Any loss arising from the ownership, maintenance or use of any aircraft not declared to the Insurer in accordance with the terms and conditions of this policy;

(c) Liability assumed by the Named Insured under any contract or agreement, unless such liability would have attached to the Insured even in the absence of such contract or agreement;

(d) Bodily injury, sickness, disease, mental anguish or death of any employee of the Named Insured while engaged in the duties of his employment, or any obligation for which the Named Insured or any company as his Insurer may be held liable under any workmen's compensation or occupational disease law;

11849

(e) Loss of or damage to property owned, rented, occupied, or used by, or in the care, custody or control of the Named Insured, or carried in or on any aircraft with respect to which the insurance afforded by this policy applies;

(f) Personal injuries or death, or damage to or destruction of property, caused directly or indirectly, by hostile or warlike action, including action in hindering, combating or defending against an actual impending or expected attack by any government or sovereign power, *de jure* or *de facto*, or military, naval, or air forces, or by an agent of such government, power, authority or forces; the discharge, explosion, or use of any weapon of war employing atomic fission or atomic fusion, or radio-active materials; insurrection, rebellion, revolution, civil war or usurped power, including any action in hindering, combating, or defending against such an occurrence; or confiscation by any government or public authority.

(11849, 11850)

(g) Any loss arising from operations by the Named Insured within any country of the Sino-Soviet bloc or Cuba: *Provided,* That a loss caused by mere misadventure in flying over or landing in such territory shall not be excluded. The "Sino-Soviet bloc" is defined to include Lithuania, Latvia, Estonia, Czechoslovakia, Bulgaria, Rumania, Hungary, Poland, Albania, East Germany (Soviet zone of Germany and Soviet sector of Berlin), Communist China, North Korea, North Vietnam, Outer Mongolia, and the Union of Soviet Socialist Republics;

(h) Any loss arising from operations by the Named Insured to or from installations of the Distant Early Warning System (DEWline) or the Ballistic Missile Early Warning System (BMEWS)."

11850

§208.14 *Filing of certificates, endorsements and notices.*

(a) Certificates of insurance, endorsements, and notices of cancellation shall be filed in duplicate on forms prescribed and furnished by the Board. All documents shall be signed in ink by an authorized officer or agent of the insurer; no facsimile signatures will be accepted.

Note: CAB Forms 606, 607, 608, and 609 are available, upon request, from the Publications Section, Civil Aeronautics Board, Washington, D. C. 20428.

(b) Endorsements that add previously unlisted aircraft to coverage or that delete listed aircraft from coverage shall be filed with the Board not more than five (5) days after the effective date of such endorsement: *Provided, however,* That aircraft shall not be listed in the carrier's

operations specifications with the Federal Aviation Agency and shall not be operated unless liability insurance coverage has attached.

(c) A supplemental carrier which intends to operate a charter flight to or from a country of the Sino-Soviet bloc or Cuba or to or from a DEWline or BMEWS installation and whose approved insurance coverage excludes operations within such areas shall file an endorsement waiving the applicable exclusion, or a separate certificate of insurance expressly applicable to such flight, at least 30 days before the proposed flight date, unless the Board finds that waiver of this requirement is in the public interest.

(d) Certificates of insurance approved by the Board shall not be canceled by the insurer upon less than thirty (30) days' notice to the Board and the insured carrier by registered mail. An insured carrier shall not cancel an approved certificate during the effectiveness of any operating authorization from the Board unless the notice of cancellation is accompanied by a replacement certificate

of insurance, complying in all respects with this part and effective upon the date of cancellation of the approved certificate and policy, or by a notice that the carrier has ceased operations.

(e) If any certificate of insurance, endorsement, notice of cancellation or other document relating to liability insurance required to be filed with the Board does not comply with these regulations, the Board will notify the air carrier and the insurer by registered mail, or by telegram, stating

the deficiencies. If the carrier is not notified of objections by the Board within 20 days after filing of any document, such document shall be deemed approved by the Board as complying with the requirements of this part, but such approval may be rescinded by the Board upon reasonable notice.

(f) All documents required to be filed with respect to liability insurance shall be filed with the Civil Aeronautics Board, Attention of Bureau of Accounts and Statistics, B-42b, Washington, D.C. 20428.

§208.15 *Compliance.*

In addition to all other applicable sanctions provided by law or the regulations of the Board, operation in air transportation of any aircraft, or performance of services within any geographical area, to which Board-approved liability insurance does not apply shall be cause for immediate suspension of all operating authority, pursuant to section 401(n)(5) of the Act and Subpart J of Part 302 of this chapter.

Minimum Extent of Service

§208.25 *Minimum service requirements.*

Each supplemental air carrier shall perform services

authorized by its certificate or authority to engage in supplemental air transportation for at least 500 hours of revenue flight in any two consecutive calendar quarters. Failure to perform such minimum services will be deemed

to constitute a *prima facie* case for suspension of the carrier's operating authority pursuant to the provisions of section 401(n)(5) of the Act: *Provided,* That the carrier may, within 15 days after the end of the two consecutive calendar quarters in which such failure occurred, show unusual circumstances constituting good cause why its operating authority should not be suspended.

Operations and Tariffs

§208.30 *Prohibited advertising.*

(a) No supplemental air carrier shall advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising.

(b) No supplemental air carrier shall conduct business in any name other than that set forth in its certificate, except as expressly authorized by the Board.

§208.31 *Prohibited control of a supplemental air carrier.*

Control of a supplemental air carrier shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person con-

trolled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to said supplemental air carrier and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, said supplemental air carrier will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this section, a transfer of 20 percent or more of the voting stock of the supplemental air carrier shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

§208.31a *Written agreements with ticket agents.*

Each agreement between a supplemental air carrier and any ticket or cargo agent shall be reduced to writing and signed by all the parties thereto, if it relates to any of the following subjects:

(a) The furnishing of persons or property for transportation;

(b) The arranging for flights for the accommodation of persons or property;

(c) The solicitation or generation of passenger or cargo traffic to be transported;

(d) The charter or lease of aircraft.

§208.32 *Tariffs and terms of service.*

(a). No air carrier shall perform any supplemental air transportation unless such air carrier shall have on file

11854

with the Board, pursuant to Part 221 of this subchapter, a currently effective tariff showing all rates, fares, and charges for the use of the entire capacity or less than the entire capacity (as defined in §208.3(s)) of one or more aircraft in such supplemental air transportation and showing all rules, regulations, practices and services in connection with such supplemental air transportation, including eligibility requirements for charter groups not inconsistent with those established in this part.

(b) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity or for less than the entire capacity (as defined in §208.3(s)) of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter: *Provided,* That the carrier shall not charge the charterer for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(11854, 11855)

(c) Reserved.

(d) Each and every contract for a charter to be operated hereunder shall incorporate the provisions of §§208.10 through 208.15, inclusive, and §§208.33 and 208.33a, where applicable, concerning insurance and substitute transportation.

11855

(e) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(f) In the case of a round-trip passenger charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round trips, there shall be no intermingling of passengers and each planeload or each plane-load group shall move as a unit in both directions.

§208.33 *Flight delays and substitute air transportation.*

Supplemental air carriers shall assume, and publish as part of the rules and regulations of their tariffs applicable to passenger service in interstate and overseas air transportation, the following obligations without prejudice, and in addition, to any other rights or remedies of passengers under applicable law:

(a) In case of flight delays of more than six hours beyond the departure time stated in the charter contract or four hours beyond the time of departure stated on an individual flight ticket, the carrier, upon request and at the passenger's or charterer's option, (or in case of the engagement by one charterer of less than the capacity of an aircraft, at the option of any one charterer) must provide alternative air transportation at no additional cost to the passenger or charterer, or immediately refund the full value of the unused ticket or the unperformed charter contract.

11856

(b) In case of additional flight delays enroute exceeding six hours for charter flights or two hours for individually ticketed flights, the carrier must, upon request and at the passenger's or charterer's option, (or in case of the engagement by one charterer of less than the capacity of an aircraft, at the option of any one charterer) furnish alternative transportation to the specified destination, or immediately refund the full value of unperformed transportation. The enroute delays shall be calculated without inclusion of any delay at departure but all additional delays at intermediate stops en route shall be added up in determining whether the limit of delay has been reached.

(c) In case of flight cancellations or flight delays, refunds shall be paid immediately upon presentation of an unused flight coupon or upon demand of the charterer or his representative (or in case of the engagement by one charterer of less than the capacity of an aircraft, upon demand of any one charterer or his representative) to the air carrier or its agent.

(11856, 11857)

(d) The rules and regulations in the carrier's tariffs governing immediate refunds or alternative transportation may provide for an exception in case of unavoidable delays due solely to weather.

§208.33a *Substitution or subcontracting.*

Supplemental air carriers may subcontract the performance of services which they have contracted to perform only to air carriers authorized by the Board to perform such services.

§208.34 *Records and record retention.*

(a) Prior to performing any supplemental air transportation pursuant to this part, the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information".

11857

(b) Each air carrier operating pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

§208.35 *Payments, gratuities, and donations.*

(a) Neither a carrier nor a travel agent shall make any payments or extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise.

(b) Neither a carrier nor a travel agent shall make any donation to a chartering organization or an individual charter participant.

(c) Nothing in this section shall preclude a carrier from paying a commission (within the limits of §208.202) to a member of a chartering organization if such member is its agent, or restrict a carrier or a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (e.g., canvas traveling bag or a money exchange computer).

11858

SUBPART B—PROVISIONS RELATING TO MILITARY CHARTERS

§208.100 *Applicability of subpart.*

This subpart sets forth the special rules applicable to military charters.

§208.101 *Minimum rates and compensation for air transportation performed for the military establishment.*

The authority conferred upon a supplemental air carrier pursuant to section 7 of Public Law 87-528, and/or a certificate of public convenience and necessity issued under sec. 401(d)(3) of the Act, insofar as it encompasses the right to provide air transportation pursuant to contract with the military establishment of the United States or any branch thereof in foreign and overseas air transportation, and air transportation between the 48 contiguous states on the one hand and the states of Alaska and Hawaii on the other hand, shall be subject to the condition that the rate or compensation received by the carrier for any such air transportation is not less than that set forth in

(11858, 11859)

§288.7 of this subchapter, irrespective of whether such contract falls within the definition of short notice MATS charter service contained in §288.1 of this subchapter.

§208.102 *Substitute service.*

Supplemental air carriers are authorized to provide "substitute service" as defined in this part, subject to the provisions of Part 288 of this subchapter.

11859

SUBPART C—PROVISIONS RELATING TO PRO RATA CHARTERS

§208.200 *Applicability of subpart.*

This subpart sets forth the special rules applicable to pro rata charters, other than those subject to Part 295 of this subchapter.

Requirements Relating to Air Carriers

§208.200a *Solicitation and formation of a chartering group.*

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight.

§208.201 *Pre-trip notification.*

Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this Part 208.[4] The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in §§208.214 and 208.215 and submit to each charter participant the information identified in §208.214.

11860

The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§208.216 and 208.204, respectively.

§208.202 *Agent's commission.*

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

---

[4] Copies of this part are available by purchase from the Superintendent of Documents, Washington, D. C. 20402. Single copies will be furnished without charge on written request to the Publications Section, Civil Aeronautics Board, Washington, D. C. 20428.

(11860, 11861)

Requirements Relating to Travel Agents

§208.203 *Prohibition against double compensation.*

A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§208.204 *Statement of supporting information.*

Travel agents shall execute, and furnish to air carriers, Section A of Part II of the Statement of Supporting Information attached hereto and made a part hereof, at such time prior to flight as required by the carrier to afford it due time for review thereof.

Requirements Relating to the Chartering Organization

§208.210 *Solicitation of charter participants.*

As the following terms are defined in §208.3, members of the charter group may be solicited only from among the

bona fide members of an organization, club, or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public. Solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer.

§208.211 *Passengers on charter flights.*

Only bona fide members of the charterer, and their immediate families (except as provided in §208.212), may

participate as passengers on a charter flight. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.[5] Solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer. Where the charterer is engaging in round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in §208.32(f). When more than one round trip is contracted for, intermingling between flights or reforming of plane-load or less than plane-load charter groups shall not be permitted and each such group must move as a unit in both directions.

§208.212 *Participation of immediate families in charter flights.*

The immediate family of any bona fide member of a charter organization may participate in a charter flight: *Provided, however,* That this section shall not apply to study group charters.

11862

§208.213 *Charter costs.*

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) chil-

[5] Where the charter is based on employment in one entity or student status at a college, records of the corporation, agency or college will suffice to meet the requirement.

dren under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants. Such costs may include a reasonable charge for compensation to members of the charter organization for actual labor and personal expenses incurred by them. Such charge shall not exceed $300 (or $500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall preclude a member of a chartering organization who is the carrier's agent from receiving a commission from the car-

rier (within the limits of §208.202), or prevent any member of the charter group from accepting such advertising and

good will items as are customarily extended to individually ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in paragraph (c) of this section, but exclusive of expenses for air transportation or land tours, exceed $750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Non-transatlantic Charter—Post Flight Report" required pursuant to §208.214.

§208.214 *Statements of charges.*

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated individual charge for the charter shall clearly identify the portion of the charges to be paid separately for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight, the charterer shall complete and supply to each charter participant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. The report shall be submitted in the form of, and contain such information including the above as more fully specified by the "Non-transatlantic Charter—Post Flight Report," annexed hereto and made a part hereof.

§208.215 *Passenger manifests.*

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A bona fide member of the chartering organization at the time the organization first gave notice to its members of firm charter plans. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a bona fide member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) Bona fide members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participation in the charter flight was permitted by the Board

pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

11865

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the outbound and inbound trips must be explained on the manifest.

(d) Attached to such manifest must be a certification, signed by a duly authorized representative of the charterer, reading:

> The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a bona fide member of the chartering organization at the time the chartering organization first gave notice to its members of firm charter plans, or (2) is a bona fide member of an entity consisting of (a) students and educational staff of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or (5) is a bona fide participant in a study group charter.
>
> .....
>
> (Signature)

(11865, 11866)

§208.216 *Statement of supporting information.*

Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information attached hereto and made a part hereof at such time prior to flight as required by the carrier to afford it due time for review thereof.

SUBPART D—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

§208.300 *Applicability of subpart.*

This subpart sets forth the special rules applicable to single entity charters, other than those subject to Part 295 of this subchapter.

§208.301 *Tariffs to be on file.*

The provisions of §208.32(a) shall apply to charters under this subpart.

11866

§208.302 *Terms of service.*

(a) The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed in accordance herewith and the contract shall be for the entire capacity or less than the entire capacity of one or more aircraft as defined in §208.3(s).

(b) The terms of service prescribed in §§208.10 through 208.15, inclusive, §§208.32(d), 208.33 and 208.33a shall be applicable in the case of single entity charters.

§208.303 *Commissions paid to travel agents.*

No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

SUBPART E—PROVISIONS RELATING TO MIXED CHARTERS

§208.400 *Applicable rules.*

The rules set forth in Subpart C of this part shall apply in the case of mixed charters, other than those subject to Part 295 of this subchapter.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(11867)

11867

(See opposite) ☞

NON-TRANSATLANTIC CHARTERS

STATEMENT OF SUPPORTING INFORMATION*

Part I - To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: _____

2. Commencement date(s) of proposed flight(s):
   (a) Going _____
   (b) Returning _____

3. Points to be included in proposed flight(s):
   (a) From _____ to _____
   (b) Returning from _____ to _____
   (c) Other stops required by charterer: _____

4. (a) Type of aircraft to be used: _____
   (b) Seating capacity: _____

5. (a) Total charter price: _____
   (b) Does the charter price conform to tariff on file with the Board? _____
   (c) If pro rata or mixed charter, explain construction of charter price in relation to tariff on file with the Board. (In case of mileage tariff, show mileage for each segment involved and indicate whether segment is live or ferry.) _____

6. (a) Has the carrier paid, or does it contemplate the payment of any commissions, direct or indirect, in connection with the proposed flight?
   Yes ☐ No ☐
   (b) If "yes," give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation. _____

7. Name and address of charterer: _____

8. If charter is single entity, indicate purpose of flight: _____

9. On what date was the charter contract executed? _____

10. If the charter is pro rata, has a copy of Part 208 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes ☐ No ☐

* This must be retained by the air carrier for two years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

Part II - To be completed for pro rata or mixed charters only.

Section A - To be supplied by travel agent, or, where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including tour arrangements).

1. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organization in relation either to the proposed charter flight or any land tour? Yes ☐ No ☐

2. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes ☐ No ☐
If answer is "yes," explain:

_____

_____

VERIFICATION 1/

State of_____)
County of_____) ss:

_____, being duly sworn, deposes and says that to
Name
the best of his knowledge and belief all the information presented in Part II, Section A of this Statement is true and correct.

_____
(Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Sworn to before me this day, the_____of_____, 19___.

_____
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

/Seal/

_____

1/ Whoever, having taken an oath before a competent--person--that he will testi declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. Title 18, U.S.C., §1621.

WARRANTY

I, _____, represent and warrant that I have
(Name)
acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 208 of the Board's Ecomomic Regulations.

_____

Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Section B - To be executed by charterer

1. All passengers were bona fide members of the chartering organization on the date when firm charter plans were first announced or are in the immediate families (spouse, dependent children, or parents living in a members household) of such members. Yes /_/ No /_/

2. Date when first charter plans were first announced: _____

3. There is a central membership list showing the date each person became a member. Yes /_/ No /_/

4. The central membership list is available for inspection at the following location _____.

5. Administrative expenses being assessed against charter passengers will not exceed $_____.

6. If the charter is round trip, the number of one-way passengers will not exceed:

_____ on first leg.
_____ on return leg.

7. No member of the chartering organization has received or will receive any compensation or benefit, directly of indirectly, from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip.

VERIFICATION OF CHARTERER 1/

State of _____)
County of _____) ss:

_____ and _____
(Name) (Name)

being duly sworn, hereby separately dispose and say that to the best of the knowledge and belief of each of them all the information in Part II, Section B, of this Statement is true and correct.

_____
(Signature of person within organization in charge of charter arrangements.)

Sworn to before me this day, the _____ of _____, 19___.

_____
(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)
[Seal]

_____
(Signature and title of officer. This should be the chief officer of the chartering organization except in the case of a school charter, in which case the verification must be by a school official not directly involved in charter.)

Sworn to before me this day, the _____ of _____, 19___.

_____
(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)
[Seal]

1/ See footnote 1 on page 38

WARRANTY OF CHARTERER

I, _____ and _____
(Name) (Name)

represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section B), and will act with regard to such operation, in a manner consistent with Part 208 of the Board's Economic Regulations.

_____
(Signature of person within organization in charge of charter arrangements.)

_____
(Signature and title of officer. This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by a school official not directly involved in charter.)

VERIFICATION OF EMPLOYER 1/

(To be furnished where eligibility to participate in charter is dependent upon employment by a particular entity.)

State of _____) ss:
County of _____)

_____, being duly sworn, deposes and says that to
(Name)
the best of his knowledge and belief solicitation for this charter has been confined to persons employed by _____
(Name of employer entity).
or persons in the immediate families of such employees.

_____
(Signature and title of authorized official of employer.)

Sworn to before me this day, the _____ of _____ 19___.

_____

1/ See footnote 1 on page 38.

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)
[Seal]

WARRANTY OF AIR CARRIER

To the best of my knowledge and belief, all the information presented in this statement including, but not limited to, those parts verified by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 208 of the Board's Economic Regulations. 1/

(Signature and title of authorized official of air carrier.)

1/ Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to keep or preserve accounts, records and memoranda in the form and manner prescribed by the Board, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. Title 49, U.S.C. §1472.

NON-TRANSATLANTIC CHARTERS

POST FLIGHT REPORT

INSTRUCTIONS

The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight. A report in this form shall also be furnished each charter participant by the charterer within 15 days after completion of each one-way or round-trip charter flight.

1. Name of carrier: _____
2. Name of chartering organization: _____
3. Analysis of charterer's receipts:

(a) _____
(No. of one-way psgrs.)

X _____
(Charge per psgr. 1/ (including amounts later refunded))

= _____

(b) _____
(No. of round-trip psgrs.)

X _____
(Charge per psgr. 1/ (including amounts later refunded))

= _____

(c) Receipts from other sources (explain)
= _____

(d) Total receipts [(a)+(b)+(c)] = _____

4. Analysis of charterer's expenditures:

Item of expenditure 2/	Paid to 3/	Amount

Total 4/ _____

1/ If charter cost was not divided equally among all participants actually transported, indicate clearly the individual amounts collected and the number of passengers paying each such amount.
2/ As a separate item there should be listed here a total of all the amounts refunded to the charter participants; also list separately air transportation, land tour, and administrative expenses.
3/ Disclose any relationship to chartering organization.
4/ If this item does not agree with item 3(d), submit an explanatory statement as to the reasons therefor.

VERIFICATION 5/

State of_____) ss:
County of_____)

I,_____, being duly sworn, hereby depose and say that this report has been prepared by me or under my direction, that I have carefully examined it and that to the best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

_____
(Signature of person in charge of charter arrangements.)

Sworn to before me this day, the_____of_____, 19___.

_____
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)
[Seal]

5/ Whoever, having taken an oath before a competent--person--that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. Title 18, U.S.C., §1621.

11982

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

PETITION FOR RECONSIDERATION

of

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Communications with respect to this Petition should be sent to:

POGUE & NEAL
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

April 4, 1966

(11983)

11983

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

PETITION FOR RECONSIDERATION

of

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Now comes the above-named certificated carriers ("Joint Intervenors") to petition for a reconsideration of the decision in the above-captioned proceeding in the respects set forth below.

Lawfulness of inclusive tour charters

1. As the majority recognized at page 3 of their opinion, the "major issue" in this proceeding is that of whether the Board has the statutory authority to permit supplementals to charter aircraft to travel agents which, in turn, may sell individually ticketed travel to the general public as part

of an all expense tour. Two members of the Board, constituting a majority of the members of the Board partici-

11984

pating in this case, held that the Board had the statutory authority to permit such inclusive tour charters. The Joint Intervenors seek a reconsideration of that holding.

2. Judge Gillilland filed a 16 page dissent demonstrating that inclusive tour charters do not constitute "charter trips in air transportation" and, therefore, supplemental air transportation within the meaning of section 101(33) of the Federal Aviation Act of 1958, as amended. His conclusion was based upon the following compelling considerations:

a. There is simply no rational consistency between the finding of the majority, on the one hand, that it would be unlawful for supplementals to sell individually ticketed travel to the general public as part of an all expense tour, and its finding that all is made right if a supplemental charters its aircraft to a tour operator who, in turn, offers the otherwise unlawful individually ticketed travel to the general public as part of an all expense tour. (pp. 1-2)

b. *American Airlines, Inc.* v. *CAB*, 348 F. 2d 349 (1965), far from supporting the position of the two-man majority, flatly invalidates an all expense tour charter program. That case held that two charterable groups might ride the same aircraft *if* no direct solicitation of the general public for individually ticketed travel is involved. The all expense tour charter program authorized by the majority herein *does* involve direct

solicitation of the general public for individually ticketed travel. It is, therefore, unlawful under the *American* case. (pp. 2-3)

11985

c. Reliance by the majority upon ICC precedent as indicative of the scope of "charters" which the Board may authorize under the Federal Aviation Act is totally in error. It borders on capriciousness to rely upon a very fuzzy and unsettled practice of surface all expense tour charters (pp. 4-6), in the face of the flat rejection by the Board of clear-cut ICC precedent prohibiting split charters in the *Transatlantic Charter Investigation.* (pp. 3-4)

d. The majority has misread the legislative history of P. L. 87-528. It concludes that Congressional *rejection* of a provision specifically permitting all-expense tour charters somehow demonstrates Congressional intent to *permit* such charters. Such a conclusion is unreasonable on its face, and is completely unreconcilable with the emphatic, unequivocal, and unanimous statements by managers of the bill (including the principal figures on the pertinent committees on both sides of the Congress) *rejecting* all expense tour charters. (pp. 6-10)

e. The inclusive tour charter program merely duplicates, at cut-rate fares, services now available on the certificated carriers. (pp. 10-15) Such a program is inconsistent with Congressional intent to permit charter operations designed to supplement, not duplicate, scheduled air transportation. (pp. 10-15)

f. Assuming, *arguendo,* the lawfulness of all expense tour charters by tour operators, the Board must first institute a proceeding in order to determine such elemental factors as the identity of the tour operators to conduct such a service, the plan of operations, and

11986

the existence of an overall public interest for a service. The Board may not circumvent such a proceeding or supply missing evidence simply by labeling its course of action "experimental or developmental." (pp. 15-16)

3. Seldom has there ever been such a cogently reasoned decision of law contained in a dissent to a decision of the Board as that set forth by Judge Gillilland. Reconsideration, in the light of the dissent alone, requires a reversal by the majority of its decision to permit all expense tour charters.

4. There is an additional reason for reconsideration of this matter. The issue of the lawfulness of all expense tour charters, and of the inextricably interrelated regulations by which such charters are to be governed, was *not* the product of a majority of the Board. It was the decision of only *two* of five members of the Board. The Court of Appeals for the Ninth Circuit, in an opinion handed down after the decision in this case, held that "absent statutory authority or instruction to the contrary, three members of a five member commission must concur in order to enter a binding order on behalf of the commission." *Flothill Products, Inc., et al.* v. *Federal Trade Commission,* No. 19521 (Opin. p. 4,

March 16, 1966). The court drew a strong distinction between authority permitting action by less than the full Board, and authority permitting less than a majority of the full commission to enter a final order. The latter authority, the Court said, required a specific statutory mandate because "it is difficult to believe that Congress conceived of the five member FTC with its politically balanced make-up, permitting two of its members to speak for the Commission." (Idem, p. 6) Section 201(c) of the Federal Aviation Act Congress permits the Board to act through three of

its members as a quorum (49 U. S. C. 1321(c)), but, as in the case of the Federal Trade Commission Act, there is *no* provision in the Federal Aviation Act permitting two members to enter a final order of the Board. As the Court pointed out, "if Congress wanted to authorize the exercise of the powers of an administrative body by less than the full body in other situations, it did not lack the words to do so expressly". (Idem p. 6) In this connection the Court cited the authority granted to the National Labor Relations Board " . . . to delegate to any group of three or more members any or all of the powers which it may itself exercise." 29 U. S. C. 153(b).

Regulation of all inclusive tour charters

5. The Joint Intervenors submit that regulations simply cannot be written which will somehow render lawful charters by supplementals to tour operators who will then sell individually ticketed space to the general public as part of an all inclusive tour. No matter how such charters are

disguised, they are still totally incompatible with the definition of supplemental air transportation in the Federal Aviation Act. Further, any regulations pursuant to which such charters would be conducted are invalid if they lack the affirmative support of three members of the Board.

6. However, assuming, *arguendo,* judicial clearance of the two-member majority's adoption of the all expense tour program, there are a minimum of four changes in the regulatory pattern proposed by the Board which are required by the public interest.

7. (i) *Enforcement of three stop provision.* The majority revised the Examiner's recommendations by increasing the number of required tour stops from two to three. It noted that the "three-stop requirement will, in our judgment, increase the emphasis on the tour aspect of the package and will provide further assurance against the

tours being used as subterfuge for individually ticketed service between the originating city and the major city of destination." (p. 19)

8. Whereas a three-stop restriction is obviously better than a two-stop restriction, it is insufficient, in and of itself, to achieve the "assurance" which the majority seeks. There must be positive and unequivocal restrictions placed in the regulation to assure implementation of the three-stop restriction. Otherwise a traveler could find it more economic simply to purchase a three-stop "tour", thus complying with the Board's three-stop requirement, and yet evade the whole tour concept by voluntarily dropping his coupons

at the second two stops.[1] The net result would be a solicitation of pleasure traffic from the general public going to a single resort for a vacation, which is not one whit different from the all expense tour service presently available on scheduled airlines, except for the cut-rate involved.

9. The only answer to this situation is to place a provision in the regulations which would *require* a tour group to move, as a unit, to each point on a tour, and to *prohibit* a supplemental air carrier from providing return transportation to any tour member who did *not* accompany the group to all three points, thereby requiring the tour member to pay for his own transportation back to the point of origination of the tour. Such a provision would help to implement the stated objective of the Board in the three-stop requirement. Opposition to such a provision on the part of either the supplementals or the tour operators in answers to this petition for reconsideration would simply demonstrate that they really do have cut-rate point-to-point air transportation in mind, *not* a tour program. The

filing of such oppositions would thus warrant the majority immediately reversing its decision to inaugurate the all expense tour charter program.

---

[1] E.g. A tour operator could package a 10 day "tour" over Christmas to Miami (for 8 days) and to Key West and Clearwater (for one day each.) With the cut-rate on air transportation to Miami embedded in the charter package price, the traveler could still come off ahead economically by not using the coupons for the Key West/Clearwater portion of the tour, and by purchasing additional accommodations for two days in Miami on his own.

10. (ii) *Restriction against scheduled service.* The record is unequivocally clear that the dominant, if not exclusive, focus of all expense tour charters will be to established resort markets such as Florida and Hawaii. CTOA, an association of tour operators, has stated to the Board that "... the safest and easiest way of lessening the risk (to a tour operator) is to promote tours only to markets which are already well developed."[1] Camino Tours candidly stated that "it is obvious that tour basing charters should be offered to areas where mass markets exist already now with the aim to expand such mass markets."[2] Accordingly, it is inevitable that a scheduled "tour" service will be developed either by a single prominent tour operator, or by a combine of tour operators, to existing mass-travel resort markets. Advertisements will shortly appear in mass media announcing "jet departures every Friday evening at 8:00 P.M.", or some similar schedule. Indeed, during the season, advertisement of *daily* departures at a set time can be anticipated to resort points.

11. The supplementals assert, and the majority appears to have bought their assertion (Opin. p. 11), that scheduled tour charters are not supposed to happen. If this is so, then the supplementals should most certainly not object to a provision in the regulations which would prohibit performing, or holding out, scheduled tour charters. If they *do*

object, then their assertions become suspect, to say the least. The point is that a *scheduled* tour service is com-

[1] Comments, Docket 15777, p. 7.

[2] Comments, Docket 15777, p. 2.

pletely incompatible with a charter service envisioned by the majority and this fact should be made crystal clear by a provision prohibiting the performance of, or holding out of, any such service.

12. (iii) *Minimum price.* The arguments advanced by the supplementals during the course of this proceeding in connection with the issue of fixing a minimum tour price stripped away the facade of their argument of an alleged "public" need for "low cost" all expense tour service. It became apparent that their interest was *not* in low-cost public service. What they wanted was a guaranteed source of diverted revenues by artificial restrictions which would positively assure the opportunity to under-cut the fares of the scheduled carriers, no matter *what* efforts the scheduled carriers made to provide the public with lower promotional and discount fares. Thus they objected vigorously to the examiner's proposal that the tour price be no less than 110% of the lowest *basic* scheduled fare, and argued, in its stead, that the minimum price should be pegged to a percentage of the lowest *available* scheduled fare, including discount fares. Unfortunately, the majority appears to have succumbed to this argument for it rejected the examiner's proposal and adopted that of the supplementals. (p. 18)

13. The Joint Intervenors request a reconsideration of this conclusion on the basis of the public interest arguments advanced by the majority *itself* in favor of the all expense tour program. The majority does not see this program as a private bill for the supplementals through a methodology of price fixing which would guarantee the supplementals the absolute right to cut-rate scheduled air carriers. Indeed, it

could hardly do so in view of the fantastic profits (and stock prices) of the large supplementals who control the bulk of the business. What it did envision was a manner to bring lower cost transportation to the general public. If this is so, then it most certainly should not have succumbed to the private need philosophy underlying the supplementals' attack on the concept of pegging the price to the lowest basic fare. That philosophy is *anti* low fares. The whole premise of the argument is that minimum prices should be geared to a percentage of the lowest discount fare, rather than the lowest basic fare, because the latter standard might encourage the scheduled carriers to place into effect *more* discount fares which would benefit the public!

14. Further, the minimum price adopted by the Board is *lower* than that recommended by both ASTA and CTOA, the two principal tour operator associations. These associations suggested an all expense tour minimum charge constructed at *125%* of the lowest discount fare, not the 110% adopted by the majority.[1] Minimum prices constructed at 125% of the lowest discount fare, to say nothing of minimum prices constructed at 110% of the lowest discount fare, could permit instances of a tour price (hotels, meals, air transportation—everything) below the scheduled basic air fare. Thus tour operators could offer a complete package in an advertisement ending up with the dramatic enticement of "A PRICE LOWER THAN WHAT YOU WOULD PAY FOR JUST THE LOWEST BASIC FARE

[1] Comments, Docket 15777, ASTA (p. 5), CTOA (p. 11).

ON A SCHEDULED AIR LINE." A moment's reflection on this matter should instantly resolve any doubt the validity of the contention made by the Joint Intervenors that the all-expense tour program will subject the pleasure travel now moving on a scheduled airlines to massive diversion. Patently, if the majority does not reverse itself on the all inclusive charter program, as it should, it should at least establish a minimum price as a percentage of the lowest basic fare, not the lowest discount fare.

11992

15. A final reason for moving from a percentage of the lowest discount fare to one of the lowest basic fare relates to all of the conditions surrounding discount fares in the tariffs of the scheduled air carriers which would also have to be followed in constructing an all expense tour price. Such discount fares as family fares, children's fares, and fares for special classes of persons are all subject to a variety of terms and conditions in scheduled carriers' tariffs. How would children's fares come into the computation of a tour price which would principally be attractive to adults? How could a single family-fare tariff be worked into a tour price when family plan rates vary according to the number traveling? It is simply impossible to relate minimum prices for all expense tours to the wide variety of terms and conditions of the promotional and discount fares of scheduled air carriers. The *only* intelligible standard is that of the lowest *basic* fare.

16. (iv) *Waivers.* Part 378.30 of the proposed regulations reads that "a waiver of any of the provisions of this regulation may be granted by the Board upon its own

initiative, or upon the submission by a supplemental air carrier of a written request therefor, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein." In the opinion of the Joint Intervenors this provision is entirely too broad and substantially weakens the integrity of the entire regulatory framework devised by the Board for all expense tour charters. There is simply no point in setting up a detailed administration for the tour program, and then to permit midnight waivers. The exemption provisions of the Act are sufficient to cover any needed deviations.

Three-split charters

17. In challenging the authority of the Board to permit split charters, the supplemental carriers argued to the

11993

American court that a two-split charter was just the beginning of the fragmentization of "charter" into a three-split, four-split, fifty-split, etc., etc., and that the word "charter" would soon become meaningless. The court, however, limited its holding to the two-split issue then before it. It said:

> ". . . whatever the limits on the Board's power of definition (of 'charter'), those limits are not breached by a definition which permits two groups to charter one half an aircraft each." 348 F. 2d 349, 354 (1965)

18. In this case the inching fragmentization has begun. The Board has now moved from a two-split to a three-split

charter. Particularly when coupled with the provision that three different tour operators can place aboard a single "chartered" aircraft groups of 40 persons solicited from the general public as part of an all expense tour, this authorization cannot stand. What the supplementals want, as indicated from their comments in Docket 15777 is to be able to market "a single tour . . . in several cities, either by the operator or retail outlets" because whereas "each city could not be counted on for a jet load, . . . several cities together could do so."[1] There it is: a scheduled service between a number of originating and destination points, with passengers on board solicited from the general public. Patently such a service constitutes individually ticketed travel which the *American* court held to be inconsistent with the charter concept.

Conclusion

Wherefore, the Joint Intervenors respectfully request the Board to reconsider its decision in the above-captioned proceeding and, after such reconsideration, to deny all applications of the supplementals herein to provide all inclusive tour charters to tour operators, and to provide three-split charters. The Joint Intervenors further request, in the event that the Board does not deny said ap-

plications to provide all inclusive tour charters, that amendments be made to the regulations governing all expense tour charters in the manner set forth above. Finally,

[1] World Comments, Docket 15777, p. 8.

the Joint Intervenors request such other or different relief as the Board may deem appropriate in the premises.

Respectfully submitted,

POGUE & NEAL

By: /s/ JAMES F. BELL

James F. Bell

Attorneys for
American Airlines, Inc.,
Braniff Airways, Inc.,
Continental Air Lines, Inc.,
Delta Air Lines, Inc.,
Eastern Air Lines, Inc.,
National Airlines, Inc.,
Northwest Airlines, Inc.,
Pan American World Airways, Inc.,
Trans World Airlines, Inc.,
United Air Lines, Inc., and
Western Air Lines, Inc.

April 4, 1966

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Petition for Reconsideration upon all parties of record in accordance with the Rules of Practice.

/s/ JAMES F. BELL

James F. Bell

April 4, 1966

(12008)

12008

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795, *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

JOINT ANSWER TO PETITIONS FOR RECONSIDERATION

of

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Communications with respect to this Petition should be sent to:

POGUE & NEAL
1001 Connecticut Avenue, N.W.
Washington, D. C. 20036

April 11, 1966

12009

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

JOINT ANSWER TO PETITIONS
FOR RECONSIDERATION

of

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Now come the above-named Joint Intervenors to answer the Petitions for Reconsideration of the decision in the above-captioned proceeding.

1. *All expense tour charters.* Creative Tour Operators Association, Inc. (CTOA), was the only petitioner for reconsideration commenting upon the provisions of Part 378 of the Board's regulations relating to inclusive tour char-

ters.[1] The responses of the Joint Intervenors to those comments are as follows:

a. *Minimum charter tour price.* The Board has proposed a minimum charter tour price at a percentage of a base consisting of the lowest discount fare of the sched-

12010

uled carriers. CTOA would drive the base down further. It would substitute *bus* fares for air fares in short-haul markets.

CTOA states that supplemental all expense tour charters, in order to be salable to the public, "must have substantially cheaper prices than tours on scheduled carriers." (p. 2) CTOA says this is so because, among other reasons, "travelers are not as familiar with the supplemental carriers . . . " as they are with scheduled carriers. Thus CTOA argues that the Board should adopt a policy of *price fixing* which would *guarantee* supplementals the absolute right to cut-rate scheduled air carriers. This policy is thus designed to discourage the scheduled carriers from serving the public interest by placing into effect lower discount fares because of their possible effect on supplemental all expense tour charters. Such an extraordinary anti-competitive philosophy has no place whatever in the framework of the language or policy of the Federal Aviation Act of 1958. If the majority in this case does not reverse itself completely on the all inclusive charter program, a minimum tour charter price should be established as a percentage of the lowest *basic* air fare, not the lowest discount air fare.

---

[1] The American Society of Travel Agents (ASTA) joined with CTOA in its opposition to certain aspects of the requirements of Part 378 for a bond.

b. *Minimum passengers for three-split charters.* The fragmentization into unlawful individually ticketed travel inherent in three-split charter decision of the Board is further evidenced by CTOA's suggestion that the provisions of Part 378.2(5) be changed to permit three groups of less than 40 board a single "chartered" aircraft. CTOA says that tour operators will try to sell more than 40 persons on each group; that they will not "hold out that they will accept less than 40 passengers per group"; but that if they fail to sell a group of 40, they would still like to

12011

carry the group. What CTOA is seeking is an advance, blanket, waiver permitting it to substitute smaller groups. Also inherent in the request is the ability to substitute smaller aircraft. On the basis of a 21-seat DC-3, the result could be a tour "charter" for three groups of seven persons each. Patently this whole business is tantamount to individually ticketed travel.

c. *Definition of tour operator.* CTOA has also highlighted one very important reason for rejecting the whole concept of all expense tour charters. It has noted that ". . . hotels or other persons who will participate in furnishing goods or services to the tour passengers" can provide all expense tour charters, and that "such persons have a distinct advantage over the non-affiliated tour operator because the cost of their own facilities is, of course, lower to them than it is to tour operators who must buy such facilities." (p. 4) This is *precisely* what the Joint Intervenors said could happen: large Miami hotel chains running their own New York-Miami air service with a couple

of side stops thrown in. This pattern can be repeated at Las Vegas, Honolulu, and a myriad of other resort points. Such a program will be highly diversionary of tour traffic now generated by the travel agents and moving scheduled airlines. Such a program, as the tour operators have apparently finally recognized, can be disruptive of the mutually advantageous partnership between the scheduled airlines and travel agencies which has done so much to promote the growth and development of air transportation in this country.

d. *Bonds.* Finally CTOA has set out to further weaken the already legally defective screening requirements of Part 378 by seeking a reduction in the amount of the bond, a change in its character (from surety to fidelity), and a shift of responsibility in part to the supplemental. The entry of a large number of indirect air carriers into the

business of providing indirect air transportation anywhere and any time they like, under the inadequate screening and protection proposed in Part 378, with or without the amendments proposed by CTOA, would be completely inconsistent with the system of *regulated* air transportation in the Federal Aviation Act.

2. *Cargo split charters.* Zantop's petition for reconsideration relates to the decision of the Examiner, sustained by the Board, to deny its request for split cargo charter authority. The ground for the petition is that this issue got "lost" in the complexity of this case. (p. 2) The issue got "lost" because of the absolute paucity of evidence submitted in the record to support any such proposition,

and the failure of any applicant to advance any "convincing reasons" for the adoption thereof. (RD-69) Indeed, Zantop was among a group of joint applicants which *abandoned* their request for split cargo charter authority by failing to include any additional revenue in their forecast to reflect the grant of any such authority. (J-333) Zantop, alone among the supplementals, now tries to revive that dead issue. Its request must be denied.

3. *Part 208.* The bulk of the petitions for reconsideration filed by the supplementals solely relate to suggested revisions in the proposed Part 208 dealing with affinity charters. It is not strange that even though the formulation of regulations relating to affinity charters has been at issue ever since this case commenced, this is the *first* time any of the supplementals have devoted any time or attention to that matter. The fact is that the supplementals have been so preoccupied during the course of this proceeding with the desirability of all expense tour charter authority, that they utterly neglected *any* discussion of affinity charter regulation until this late date.

The gravamen of their complaint is that Part 208 fol-

lows Part 295, which sets forth the regulations worked out by the Board over the years relating to transatlantic charters provided by *supplementals,* rather than Part 207, which sets forth rules and regulations relating to charters provided by *scheduled* carriers. The supplementals claim "discrimination" in the necessity, for example, of having to produce paperwork not required of the scheduled carriers.

The answer is obvious. The principal business offered by the scheduled carriers is scheduled service which is

regulated by the Board in a manner totally inapplicable to the supplementals. The principal business of the supplementals is (or should be) the provision of affinity charters. The petitions filed by the supplementals never quite make it clear just why the Board would be acting in a discriminatory manner unless it regulated the principal business of the supplementals in the same manner as it regulates a collateral function of the scheduled carriers.[1]

The supplementals further claim that domestic charters are somehow different from transatlantic charters and are, therefore, entitled to a more "flexible" regulatory environment. They are wrong. Regulations are not invented *per se*. They are developed to meet and control certain objectionable practices. The record in this proceeding contains a recitation of objectionable practices relating to *domestic* supplemental charters in a Letter of Mr. J. G. Adams, Director, Bureau of Enforcement, dated December 11, 1964 to Capitol, World, and TIA (JI-1158). The Examiner summarized these objectionable practices in his Recommended Decision at pp. 131 and 132, and concluded, at RD 133 that "The regulatory tools for coping with many of these difficulties will be provided if, as has been recom-

mended, the basic scheme of Part 295 is extended to govern the interstate, overseas, and other foreign supplemental air transportation operations of the supplemental

[1] It might also be noted that in picking and choosing provisions of Part 207 which the supplementals assert should be included in Part 208, the provisions of Part 207 limiting charters by scheduled carriers between the mainland and Hawaii were notably omitted!

air carriers." The Board correctly adopted his recommendation.

WHEREFORE, the Joint Intervenors respectfully request the Board to deny the petitions for reconsideration filed by the parties in this proceeding to the extent set forth above.

Respectfully submitted,

POGUE & NEAL

By: /s/ JAMES F. BELL
James F. Bell

Attorneys for
American Airlines, Inc.,
Braniff Airways, Inc.,
Continental Air Lines, Inc.,
Delta Air Lines, Inc.,
Eastern Air Lines, Inc.,
National Airlines, Inc.,
Northwest Airlines, Inc.,
Pan American World Airways, Inc.,
Trans World Airlines, Inc.,
United Air Lines, Inc., and
Western Air Lines, Inc.

April 11, 1966

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer upon all parties of record in accordance with the Rules of Practice.

/s/ JAMES F. BELL
James F. Bell

(12044)

12044

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 13795, *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

MOTION TO STAY OF

American Airlines, Inc., Braniff Airways, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Communications with respect to this Motion should be sent to:

POGUE & NEAL
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

April 11, 1966

12045

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795, *et al.*

MOTION TO STAY OF

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

Now come the Joint Intervenors[1] in the above-captioned proceeding and, pursuant to Section 1005(d) of the Federal Aviation Act of 1958, 49 U. S. C. 1484(d), and Section 10(d) of the Administrative Procedure Act, 5 U. S. C. 1009(d), move to stay the effectiveness of all authority granted to the supplementals as a result of this proceeding to provide inclusive tour "charters" and three-split "charters", until final judicial resolution of the question of whether the Board

---

[1] American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines Inc., Delta Air Lines, Inc., Eastern Air Lines Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

has the statutory authority to permit supplementals to provide such service. In support whereof, the Joint Intervenors state as follows:

12046

1. Two members of the Board, constituting a majority of the three members participating in this case, have held that the Board has the statutory authority to permit supplementals to charter aircraft to travel agents which, in turn, may sell individually ticketed travel to the general public as part of an all expense tour. Judge Gillilland, the third member of the Board participating in the case, filed a [illegible] page dissent demonstrating that inclusive tour charters do not constitute "charter trips in air transportation", and, therefore, supplemental air transportation within the meaning of Section 101(33) of the Federal Aviation Act of 1958, as amended.

2. The Joint Intervenors believe that the two members of the Board asserting statutory authority to permit supplementals to provide all inclusive tour charters have erred for the reasons set forth in Judge Gillilland's dissent. They further believe that under *Flothill Products, Inc. et al.* v. *Federal Trade Commission,* No. 19521, decided by the Court of Appeals for the Ninth Circuit on March 16, 1966, two members of the Board may not enter a final order reaching the conclusion of law and policy of the type embraced in a determination to permit supplementals to provide all inclusive tour charters. Understandably, therefore, the Joint Intervenors intend to seek judicial redress. At the same time, they will challenge the decision to permit supplementals to provide three-split charters, particularly insofar as such an authorization will permit three different tour groups

solicited from the general public as part of an all expense tour, which groups may be located in three different cities, to board a single "chartered" aircraft.

3. Surely everyone will agree, at the outset, that the question of whether the Board has the statutory authority to permit supplementals to provide all inclusive tour charters is "close". The division between the three members

of the Board participating in the case demonstrates that fact. Indeed, the annals of Board decisions may be searched in vain for a decision of such drastic, and national, significance, which has been decided by only two members of the Board and where there has been such a powerful and cogent dissent. The point is that the question herein involved is, ultimately, the type of question which must be decided in court.

4. These circumstances should, in and of themselves, warrant the issuance of an administrative stay. The case of the Joint Intervenors on the issue of law is not marginal. It is strong. Accordingly, justice requires that before the Board permits implementation of a construction of the term "charter", *never* before made in the entire 28-year history of the Federal Aviation Act of 1958, and of its predecessor, the Civil Aeronautics Act of 1938, it should await judicial resolution of the question of whether the Board has statutory authority to permit all inclusive tour charters.

5. The very "closeness" of the issue requires a stay for another—controlling—reason. It is not possible to overstate the chaotic results which would follow if, in the midst of a

massive all inclusive tour charter program, a judicial determination were made invalidating the two-member decision that the Board has the statutory authority to permit such service. Literally thousands of innocent travelers and families could have their long-planned vacations destroyed. This is not the simple case of an existing carrier protesting a duplicating route award where, in the event of judicial termination of the duplicating route award, the traveling public may suffer some inconvenience in switching to another airline. This is a complex case of a program involving a *package* including reservations for specific hotels and many other activities, all of which will fall into a confusing tangle of broken vacations in the event of judicial

termination of the program. It is not enough to say that any such result will be the court's "fault", rather than that of the Board. The point is that there is a real uncertainty as to whether the two-member decision will be overturned. Surely no fair-minded person would discount that possibility. That fact should, therefore, be the dominant and compelling consideration in Board action upon this motion to stay. If *ever* there was a case for an administrative stay, this is it.

6. And let it *never* be forgotten that it is the *public* which will suffer. Both tour operators and supplementals are aware of the uncertainty created by the fact of judicial review and the "closeness" of the issue. Their counsel will, of course, advise them how to "cover" themselves so as to avoid financial liability in the event of a judicial mid-tour termination. And so it is the prospective vacationer who

will suffer—not the corporations with whom he may be dealing.

7. The suggestion may be made by the supplementals that the extent of human injury has been overstated by the Joint Intervenors because, until the conclusion of judicial review, nobody is really going to seriously promote all inclusive tour charters. American Flyers, one of the supplementals, candidly implied such a suggestion when it said in its Petition for Reconsideration filed in this case on April 4, 1966:

> "The opportunities afforded supplemental carriers by inclusive tour authority are beclouded by the questions raised by the scheduled carriers as to the legality of the Board's action." (p. 2).

Assuming, *arguendo,* the validity of such a suggestion, can the supplementals honestly claim any "injury" if a stay is granted pending judicial review? Should the Board permit a program to get underway in the atmosphere of such un-

certainty and under circumstances where the corporations involved will so *caveat* themselves that all of the injury will fall on the traveling public in the event of judicial termination? Is it in the public interest to permit a program of such a broad sweep to get underway even if just a few members of the public may be adversely affected? The Joint Intervenors think not and, therefore, strongly urge the Board to grant the stay requested herein.

8. The *public* interest considerations set forth above should control the disposition of this motion and render

unnecessary any effort to balance equities between the Joint Intervenors, on the one hand, and the supplementals, on the other. However, even on such a "balance", equity lies with the Joint Intervenors. It must be remembered that it is the *tour operator* which will determine where, when, and how an all inclusive tour will be operated. The supplementals will simply furnish the transportation vehicle and driver. And CTOA, an association of *tour operators,* has stated to the Board that ". . . the safest and easiest way of lessening the risk (to a tour operator) is to promote tours *only to markets which are already well developed.*"[1] (Italics supplied). It is, therefore, impossible to assert that the Joint Intervenors will not be harmed by a diversion of revenue during the period an all inclusive tour program may be operated prior to judicial termination. But the harm which they will suffer goes far beyond just the dollars involved. As the Examiner found—a finding which was *adopted* by the Board—the scheduled airlines have spent "considerable time, effort, and money" on "the development of all expense tours in both domestic and international air transportation". (RD-52). The evidence

12050

of record introduced in this case show a 20-year history of all expense tour promotion and service to hundreds of thousands of Americans including, for example, the widely distributed current 353-page Consolidated Air Tour Manual listing some of the hundreds of tours of all descriptions available on the scheduled carriers which meet every conceivable taste of a prospective tourist. (RD-51-53). Sales in such tours amounted to almost $100 million in 1963. (RD-

[1] Comments, Docket 15777, p. 7.

54). The Joint Intervenors believe that their investment in the all expense tour program would be substantially jeopardized by the "sour taste" which the public would experience by the institution of a massive program of all expense tour charters using supplemental aircraft which was subsequently terminated by a court.

9. Finally, it will be noted that the stay sought by the Joint Intervenors is narrow in scope. They have no objection to the effectiveness of the certificates and related regulations issued herein insofar as they concern the performance of affinity charters. This motion is solely directed to all expense tour charters, and three-split charters. The Joint Intervenors also assure the Board that they will promptly seek judicial relief immediately following action upon its petition for reconsideration filed herein, and assuming denial of the same.

WHEREFORE, the above-named Joint Intervenors respectfully move the Board to stay the effectiveness of all authority granted to the supplementals as a result of this proceeding to provide inclusive tour "charters" and three-split "charters", until final judicial resolution of the ques-

tion of whether the Board has the statutory authority to permit supplementals to provide such service. They fur-

(12051)

ther request any further or different relief which the Board may deem appropriate in the premises.

Respectfully submitted,

POGUE & NEAL

By: /s/ JAMES F. BELL
James F. Bell
Attorneys for
American Airlines, Inc.,
Braniff Airways, Inc.,
Continental Air Lines, Inc.,
Delta Air Lines, Inc.,
Eastern Air Lines, Inc.,
National Airlines, Inc.,
Northwest Airlines, Inc.,
Pan American World Airways, Inc.,
Trans World Airlines, Inc.,
United Air Lines, Inc., and
Western Air Lines, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion upon all parties of record in accordance with the Rules of Practice.

/s/ JAMES F. BELL
James F. Bell

April 11, 1966

12093

Order No. E-23600

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 29th day of April, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

SUPPLEMENTAL OPINION AND ORDER ON RECONSIDERATION

Petitions for reconsideration of the Board's opinion and order in the above-entitled proceeding (Order E-23350, March 11, 1966), and for other relief, have been filed by various parties.[1] Answers in support of, and in opposition to, the petitions have also been filed.[2] Upon consideration

---

[1] AAXICO Airlines, American Flyers Airlines, American Society of Travel Agents, Capitol Airways, Conner Air Lines, Creative Tour Operators Assn., Holiday Airways, Joint Intervenors, Overseas National Airways, Saturn Airways, Trans International Airways, United States Overseas Airlines, World Airways, and Zantop Air Transport.

[2] Answers were submitted by Airlift International, American Society of Travel Agents, Bureau of Operating Rights, Capitol, Creative Tour Operators Assn., Flying Tiger Line, Joint Intervenors, and Saturn.

of the matters submitted, we find that except to the extent hereinafter indicated, reconsideration of our decision, or the grant of the other relief requested, is not warranted.

1. Conner Air Lines and Holiday Airways, whose applications for supplemental certificates were denied now request that the record be reopened for further hearing on their qualifications. They contend that since the Board reopened that record to give ONA and Standard a second chance to establish fitness and ability they should be af-

forded a similar opportunity, and that further hearings would not prejudice the case of any other applicant.

Although on the record before it the Board could not find ONA and Standard qualified, there were special circumstances affecting those carriers which fully justified further hearings on their applications. Thus, the Board had knowledge that, contrary to the record in this proceeding which showed that ONA was dormant, ONA had resumed operations as a supplemental air carrier under its interim certificate and was currently providing services. Further, the Board had before it for decision the *Reopened Transatlantic Charter Investigation,* Docket 11908 *et al.,* in which the hearing examiner, on a more recent record, had found ONA fit, willing, and able, and had recommended that it be issued a certificate authorizing it to provide transatlantic charter services. In the case of Standard, the Board only a short time before its decision in this case had issued a decision in another proceeding in which it found Standard qualified to provide services as a supplemental air carrier and terminated the prior suspension of

the carrier's interim certificate authorizing it to engage in supplemental air transportation. While the Board could not rely on the records in those cases in disposing of the carriers' qualifications in the present proceeding, it obviously could not close its eyes to the significant changes that have occurred. There were no comparable considerations that would warrant further hearings on the applications of Conner and Holiday.

12095

Holiday and Conner have not established error in the Board's prior conclusion that they are not fit, willing, and able, nor have they presented new matters that would warrant reopening the record for further hearing on their qualifications. Holiday alleges, *inter alia*, that it now owns a DC-3 aircraft, that it has made a substantial deposit toward the purchase of a DC-7 aircraft to be delivered to it within a few days of the filing of its petition, that it has been successful in developing a major contract source for the utilization of the DC-7, and that it has additional commitments for financing its proposed operation. Holiday was given a full opportunity to present to the examiner all relevant evidence bearing on its fitness. Indeed, the examiner held the record open to afford the applicant an opportunity to submit a contract with a large firm to utilize its services which the applicant alleged was imminent. It failed to avail itself of the opportunity afforded it.

Although Holiday now makes various assertions as to its current qualifications, it has not, with the exception of the claimed ownership of a DC-3 aircraft, backed its allegations with supporting data. Thus, it has not attached copies of the contract that it claims to have successfully

developed, of specific agreements covering new financial commitments, of the contract for the purchase of the DC-7, or of the financial arrangements under which it is being purchased. In short, the petition, viewed against the background of the numerous shortcomings of Holiday's presentation at the hearing before the examiner, falls far short of the type of specific showing that would warrant vacating the Board's prior determination and reopening the record for further hearing on the applicant's qualifications.

12096

2. ONA seeks reconsideration of the Board's action directing further hearings on its application, and requests that the Board determine its current fitness by taking official notice of its Form 41 reports, of the record in the *Reopened Transatlantic Charter Investigation, supra,* or both. ONA alleges that the further hearings will place it at a competitive disadvantage, since it will lack in the interim the inclusive tour authority granted other applicants; will prejudice its equipment-financing plans; and will deprive it of comparative consideration with other applicants for overseas and international authority.

We will deny ONA's petition. Although the burden that the further hearings may place on ONA is regrettable, we conclude that under the circumstances here the Board would not be justified in evaluating the applicant's fitness on the basis of raw Form 41 data which the parties to the proceeding have not had an opportunity to challenge, or upon evidence in another proceeding involving different parties and issues. However, in order to expedite the hear-

ings, we will direct that the record in the *Reopened Transatlantic Charter Investigation* relating to ONA's fitness to provide transatlantic charter services be consolidated into, and made a part of, the record in the reopened proceeding.[3]

12097

Pending Board decision on its application, ONA will be free to apply for an amendment of its interim certificate that will authorize it to operate inclusive tour charters pursuant to the provisions of Part 378 of the Board's regulations.

3. AAXICO requests that the Board reconsider the denial of its application and defer action on it. Since the Board by Order E-22680 approved the merger of AAXICO into Saturn, AAXICO's independent application in the present proceeding was treated as moot.

However, as AAXICO points out, a petition for review of the Board's order is now pending in court and it is possible for the merger to be set aside and for AAXICO to reemerge as an operating entity. We will, therefore, grant the carrier's request and defer action on AAXICO's application until further order of the Board.

12098

4. The applicants granted supplemental air carrier certificates have raised a number of objections to Revised Part 208 of the Board's Economic Regulations governing their domestic charter operations. The primary focal points

[3] We will leave to the examiner the procedures for designating the portions of the record upon which the parties wish to rely, and for insuring that the parties are accorded the opportunity of rebutting such evidence.

of the carriers' objections in this regard are the various reporting, record retention and documentation requirements which would be imposed for the first time on domestic charters by Part 208.[4] It is alleged that these requirements are unnecessary and unduly burdensome and that the supplementals will be placed at a competitive disadvantage since similar obligations are not imposed at the present time by Part 207 of the Board's Economic Regulations with respect to domestic charters performed by scheduled carriers. On reconsideration, we have determined to delete these requirements,[4a] at least for the present, subject to a study of the matter on an industry-wide basis.

However, contrary to the requests of the supplementals, we have decided to retain intact those regulatory provisions concerning charterworthiness of affinity groups. These provisions, which are derived from Part 295, were at issue in this proceeding and are designed to assure that charter groups are *bona fide*. Moreover, there has been no showing that the imposition of these requirements will place supplemental carriers at a significant competitive

12099

disadvantage with respect to charters performed by scheduled carriers pursuant to Part 207.[5]

---

[4] The reports or documents to which reference is made are Statements of Supporting Information (§§208.34(a), 208.204 and 208.216), Post Flight Reports (§208.214(b)), and passenger manifests (§208.215).

[4a] We are retaining, however, that portion of §208.215 (Passenger manifests) which requires the charterer to file with the carrier the names and addresses of the passengers. This will enable the carrier, in turn, to comply with §208.4, which requires it to maintain such information for each charter trip.

[5] We intend to initiate appropriate proceedings to bring Parts 207, 208 and 295 into conformance.

We are also rejecting the proposal that the travel agents' commission on supplemental charters be increased to 10 percent of the charter price. Under §§208.202 and 208.302 the commission has been set at 5 percent or at the rate paid by certificated carriers for similar service, whichever is greater. There is no showing that this rate, which is generally paid for domestic agency generated traffic, will not provide adequate incentives for development of charter business.

It has also been requested that applications for a waiver from the regulatory provisions should be fileable up to 10 days prior to the charter flight, rather than 30 days. While not adopting this particular change, inasmuch as the Board normally needs the full 30 days to process a waiver request, we are amending §208.3a to provide that a waiver application filed less than 30 days prior to the flight may be accepted in emergency situations where the circumstances warranting the waiver did not exist 30 days prior to the flight.

Capitol urges that §208.101, as well as condition (1) of the supplemental certificates, be amended to exclude one-way services purchased by the military under commercial charter tariffs from the minimum rates in Part 288. This proposal was presented for the first time on reconsideration, although addressed to a regulatory provision which has been in effect for several years.[6] Accordingly, disposi-

12100

tion of this question cannot be made on the basis of the present record. The Board will, however, devote further

[6] The predecessor to §208.101, and substantially identical thereto, is former §208.30, which has been in effect since 1962.

study to the matter, with a possible view toward institution of an appropriate rule making proceeding.[7]

5. Several parties urge that a number of changes should be made to Part 378 of the Board's Special Regulations,[8] which governs the operation of inclusive tour charters. Among the proposals advanced by the trunklines are the following: (a) prohibiting return transportation to any tour participant who failed to accompany the group to all three intermediate stops; (b) prohibiting the performance, or holding out, of scheduled tour service; (c) deleting the provision (§378.2(b)(5)) which permits an aircraft under charter to one tour operator to carry tour groups of at least 40 participants; (d) deleting the provision (§378.30) which allows a waiver of the provisions of Part 378 under certain circumstances. We find that the foregoing proposals would be unduly burdensome and restrictive and unnecessary to prevent diversion of scheduled traffic or to assure the integrity of the charter concept. Accordingly, they will not be adopted.[9]

---

[7] We have made certain amendments to Part 208 to make clear that (1) the requirement that the charter price be paid in advance, (2) the restrictions against carriage of one-way passengers on round-trip flights and against intermingling of passengers under contracts for two or more round-trip flights, and (3) the requirement that the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown, are not applicable to single entity and military charters. See §§208.103, 208.301.

[8] This regulation was issued as SPR-14 in conjunction with the original opinion.

[9] We are also rejecting the request of the Creative Tour Operators' Association (CTOA) that tours be allowed to commence despite the fact that a group numbers less than 40 at departure time, provided that the tour be "held out" for a minimum of 40 passengers. Such an amendment would render §378.2(b)(5) unenforceable.

Amendments to the minimum price provision (§378.2(b)(4)) have been advanced both by the trunkline carriers and by CTOA.[10] However, for the reasons set forth in our original decision, we believe this provision as currently constituted represents a reasonable accommodation of the various conflicting interests. We will also reject, as being without support, CTOA's request to exclude from the definition of "tour operator" anyone who himself is, or is controlled by, a hotel or other person who will participate in furnishing goods and services to the tour passengers. We are not persuaded at this time that such a definition is necessary to prevent unfair competition among tour operators,[11] in view of the conditions imposed by Part 378 upon tour operations.

Finally, CTOA and the American Society of Travel Agents (ASTA) contend, as they did in the original proceeding, that the surety bond amount of twice the charter price is excessive and out of proportion to the risk involved. There has been no showing, however, that the bond

---

[10] The trunklines argue that the tour price should be keyed to basic, rather than promotional or discount, scheduled fares, while CTOA contends that the price formula should provide for (1) a construction including the lowest cost form of transportation (i.e., surface transportation) between intermediate tour stops and (2) use of scheduled propeller fares where the tour transportation is provided via such aircraft.

[11] As originally adopted, Part 378 would preclude supplemental air carriers from acting as tour operators. We are expanding this provision to cover all direct air carriers. (See §378.2(d).) It should also be noted that control relationships between air carriers and tour operators are prohibited by section 408 of the Act in the absence of Board approval. (See §378.3.)

(12101, 12102, 12103)

would result in excessive costs.[12] If the cost subsequently proves in fact to be unduly burdensome, appropriate

12102

changes in this provision can be accomplished at that time. We also reject the suggestion that the carrier should be required to assume a portion of the bonding obligation. Any arrangement made by the tour operator to insulate himself against the carrier's failure to perform should be left to the tour operator and the carrier, thus leaving the tour participant to look, in the event of an aborted tour, to the tour operator, who has the primary responsibility in such a situation.[13]

12103

6. The award of inclusive tour and split charter authority to the supplemental carriers was made by a two-to-one vote, and it is asserted that the decision is invalid in light of the recent decision by the United States Court of Appeals for the Ninth Circuit in *Flotill Products* v. *Federal Trade Commission* (No. 19,521, March 16, 1966). The Court there held (p. 7 of slip opinion) that an order of the five member FTC "must be supported by three members in order to" be enforceable. Chairman Murphy has now qualified himself and cast his vote with Vice Chairman

[12] CTOA estimates that the bonding cost for a tour having a $30,000 charter price would amount to approximately $13.13 per passenger for a 180 seat aircraft.

[13] We have determined on our own initiative to amend Part 378 so as to delete the verification requirements contained therein, which impose the burden of obtaining notarizations. These requirements are unnecessary in view of 18 U. S. C. 1001, which imposes criminal punishment for false statements made in documents such as those required under Part 378.

Murphy and Member Minetti in favor of the inclusive tour and split charter awards, and the decision now has the support of a majority of the Board.[14] In these circumstances, the *Flotill* decision is inapposite to the factual situation presented, and, in our view, does not in any event govern proceedings before this Board.[15]

7. The trunklines have requested that the Board stay the effectiveness of the inclusive tour and split charter authority granted to the supplemental carriers until final judicial resolution of the legal question of whether the Board has the statutory authority to permit supplementals to provide such service. In support of their motion,

the trunklines argue that (1) the question of whether the Board has the statutory power to grant such authority is close; (2) the grant of a stay would not adversely affect the supplementals, but a denial thereof would have a substantially damaging impact on scheduled carriers; and (3) chaotic results would follow if in the midst of a massive tour program the court invalidates the Board's decision.

---

[14] There is appended to this order a separate statement by Member Adams setting forth his reasons for not participating in the decision in this proceeding.

[15] Unlike the Federal Trade Commission Act, the Federal Aviation Act specifically provides (Section 201(c)) that "[t]hree of the members shall constitute a quorum of the Board." The *Flotill* decision recognized, we believe, that the reasonable construction of this specific congressional provision "would be that a majority of a quorum would be sufficient to render a decision" (slip opinion, p. 6). The Board members unanimously concur in the view that a decision by a majority of a quorum is legally sufficient under the Federal Aviation Act.

We have determined to deny the motion. Apart from our view that we have correctly interpreted the statute, there is no showing that the trunkline carriers will suffer any significant adverse impact from the prompt implementation of the authorizations. As we found in our original opinion, the extent to which persons patronizing inclusive tours would otherwise travel by air can only be the subject of speculation, and such diversion from scheduled services as may be occasioned by inclusive tour charters will be insignificant in relation to the total traffic and traffic growth of the trunkline carriers. The same is clearly true of the split charter authority. Moreover, grant of a stay *pendente lite* would deny to the public the benefits of a new low-cost transportation service for an extended period of time. The carriers' prediction of chaotic results following any judicial reversal of our inclusive tour determination appears grossly overstated. There is no reason to believe that any tour group will be stranded or that the courts or the Board will be unable to deal appropriately with any hardship situations which might arise. To be sure, a judicial reversal might require a number of persons to alter their future

vacation plans, but that contingency does not justify depriving the general public as well as the supplemental carriers of the benefits of inclusive tours while this matter is being litigated in the courts.[16]

We have considered the remaining matters set forth in the various petitions filed herein and find that they do not warrant the relief requested.

---

[16] The bonding requirements imposed by our regulation are such as to insure that the tour price will be refunded to the purchaser in the event of nonperformance.

(12105, 12106)

ACCORDINGLY, IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 208 and 378 of the Board's Regulations, to be effective on May 13, 1966.

2. That the portion of the record in the *Reopened Transatlantic Charter Investigation,* Docket 11908 *et al.,* relating to ONA's fitness, be and it hereby is consolidated into and made a part of the record in the *Reopened Supplemental Air Service Proceeding,* Docket 13795 *et al.*

3. That the motion of the Joint Interveners for a stay of the effectiveness of Order E-23350, dated March 11, 1966, be and it hereby is denied.

4. That final action on AAXICO's application in this proceeding be and it hereby is deferred until further order of the Board.

12106

5. That, except to the extent indicated herein, all motions and all petitions for reconsideration and other relief filed herein be and they hereby are denied.

Chairman MURPHY, Vice Chairman MURPHY and Member MINETTI, concurred in the above opinion and order, with the Chairman filing the attached statement. Member GILLILLAND filed the attached concurrence and dissent. Member ADAMS did not participate, filing the attached statement of reasons therefor.

HAROLD R. SANDERSON
Secretary

(SEAL)

(12107, 12108)

12107

MURPHY, Chairman, Concurring:

I join with the other Members of the Board in rejecting the argument that a majority of a quorum of three cannot make final and binding determinations. Nevertheless, in view of the claim made by the joint intervenors that the Board's determination on inclusive tours failed for want of the affirmative vote of a majority of the Board, and in order to avoid any possible question as to the validity of the Board's decision in this regard, I have determined to participate. On the basis of the record in this proceeding, I have concluded that the decisions of the majority on the issues, together with the supporting reasons, are sound. I therefore concur in the findings and conclusions made in the opinion annexed to Order E-23350, March 11, 1966, and join in the instant opinion and order on reconsideration.

/s/ CHARLES S. MURPHY

12108

GILLILLAND, Member, Concurring and Dissenting:

I would grant the petitions insofar as they request reconsideration of the Board's holding that statutory authority exists permitting all-expense tour charters. The dissent attached to Order E-23350, March 11, 1966, clearly shows that the decision is contrary to law and policy. Further, the petitions that request changes in Part 378 should be granted. Such changes would maintain the integrity of the group concept, minimize diversion from the scheduled carriers, and tend to prevent all-expense tour

charters from becoming individually ticketed, cutrate, scheduled service.

/s/ WHITNEY GILLILLAND

12109

STATEMENT OF MEMBER ADAMS:

In my judgment, the contention that three Members must concur as a prerequisite to valid Board action lacks merit. However, under the circumstances I deem it appropriate to set forth briefly the reasons for my non-participation.

During 1961 and early 1962, while I was serving as Director of the Board's Bureau of Enforcement, I supervised a series of investigations of each of the supplemental air carriers. One of the purposes of these investigations was to develop information bearing upon compliance disposition for possible use in proceedings for operating authority under any new statute which might be enacted.

One of the issues in the present case is whether the applicants are "fit" and this includes the issue of compliance disposition. In point of fact, little or no evidence with respect to compliance disposition was introduced in the instant case, and none of the parties opposing certification did so on compliance grounds. Nevertheless, under the foregoing circumstances, whether or not as a technical matter I may be disqualified, I elect not to participate in the proceedings.

/s/ JOHN G. ADAMS

(12110)

12110

Regulation No. ER-462

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Amendment No. 1 to Revised
Part 208
Effective: May 13, 1966
Adopted: April 29, 1966

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

AMENDMENTS ADOPTED ON RECONSIDERATION

By Order E-23350, adopted March 11, 1966, in the *Supplemental Air Service Proceeding,* Docket 13795 *et al.,* the Board adopted and issued concurrently therewith Revised Part 208 of the Board's Economic Regulations,[1] which contains all the regulatory provisions pertaining to the domestic charter operations of the supplemental air carriers certificated under section 401 of the Federal Aviation Act, except those rules applicable to inclusive tour charters.[2]

[1] Regulation No. ER-454.

[2] Inclusive tour charters are governed by Part 378 of the Board's Special Regulations.

In its opinion on reconsideration in the *Supplemental* proceeding,[3] the Board has determined, for the reasons set forth therein, to amend Revised Part 208 in a number of respects. The discussion of these amendments, which normally accompanies the amended rule, is contained in the aforesaid opinion.[4]

12111

For the reasons set forth in Regulation ER-454, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest. Accordingly, the Board hereby amends Revised Part 208 of its Economic Regulations (14 CFR Part 208), effective May 13, 1966, in the following respects:

1. By deleting §§208.204, 208.216 and 208.303 from the Table of Contents and revising certain titles of the remainder thereof to read as follows, and by adding new section 208.103:

Sec.

* * * * *

208.34 Record retention.

* * * * *

208.103 Tariffs and terms of service.

* * * * *

208.301 Tariffs and terms of service.
208.302 Commissions paid to travel agents.

* * * * *

2. By revising §208.3a to read as follows:

---

[3] Order E-23600, adopted on April 29, 1966.

[4] *Id.*, pp. 6-8.

(12111, 12112)

§208.3a *Waiver.*

A waiver of any of the provisions of this part may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior

12112

to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

3. By deleting §208.34(a) so that §208.34 reads as follows:

§208.34 *Record retention.*

Each carrier operating pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

4. By revising §208.35(c) to read as follows:

§208.35 *Payments, gratuities and donations.*

• • • • •

(c) Nothing in this section shall preclude a carrier from paying a commission (within the limits of §§208.202 and 208.302) to a member of a chartering organization if such member is its agent, or restrict a carrier or a travel agent from offering to each member of the charter group such

advertising and good will items as are customarily extended to individually ticketed passengers (e.g., canvas traveling bag or a money exchange computer).

5. By adding new §208.103 which reads as follows:

§208.103 *Tariffs and terms of service.*

The provisions of §208.32 shall apply to charters under this subpart except that paragraphs (e) and (f) and the second sentence of paragraph (b) of such section shall not be applicable.

6. By revising §208.201 to read as follows:

§208.201 *Pretrip notification.*

12113

Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this Part 208.[5] The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in §208.215.

7. By deleting §208.204.

8. By deleting §208.214(b) so that §208.214 reads as follows:

---

[5] Copies of this part are available by purchase from the Superintendent of Documents, Washington, D. C. 20402. Single copies will be furnished without charge on written request to the Publications Section, Civil Aeronautics Board, Washington, D. C. 20428.

(12113, 12114)

§208.214 *Statements of charges.*

Any announcements or statements by the charterer to prospective charter participants of the anticipated individual charge for the charter shall clearly identify the portion of the charges to be paid separately for air transportation, for the land tour, and for the administrative expenses of the charterer.

9. By revising §208.215 to read as follows:

§208.215 *Passenger manifests.*

Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of persons to be transported in interstate or overseas air transportation.

12114

10. By deleting §208.216.

11. By revising §208.301 to read as follows:

§208.301 *Tariffs and terms of service.*

The provisions of §208.32 shall apply to charters under this subpart except that paragraphs (e) and (f) and the second sentence of paragraph (b) of such section shall not be so applicable.

12. By deleting §208.302 and redesignating §208.303 (Commissions paid to travel agents) as §20[illegible].302.

13. By deleting the forms (Statement of Supporting Information and Post Flight Report) attached to the regulation.

(Sections 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 401(d)(3), 401(n), 407 and 417 of the Federal Aviation Act of 1958, as amended; 76 Stat. 143; 49 U.S.C. 1371(d)(3); 76 Stat. 144; 49 U.S.C. 1371(n); 72 Stat. 766; 49 U.S.C. 1377; 76 Stat. 145; 49 U.S.C. 1387; and sec. 7 of Public Law 87-528, 76 Stat. 146.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

NOTE: This is Amendment No. 1 to Part 208 effective May 13, 1966.

(12115)

12115

Regulation No. SPR-15

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Special Regulations
Amendment No. 1 to Part 378
Effective: May 13, 1966
Adopted: April 29, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

AMENDMENTS ADOPTED ON RECONSIDERATION

By Order E-23350, adopted March 11, 1966, in the *Supplemental Air Service Proceeding*, Docket 13795 *et al.*, the Board adopted and issued concurrently therewith new Part 378 of the Board's Special Regulations,[1] which contains the provisions governing the operation of inclusive tour charters. In its order on reconsideration in the *Supplemental* proceeding,[2] the Board determined, *inter alia*, to amend Part 378 so as to delete any verification requirements imposed therein. This action was prompted by the belief that such requirements are unnecessary in view of 18 U.S.C. 1001, which imposes criminal punishment for false state-

[1] Regulation SPR-14.

[2] Order No. E-23600, adopted on April 29, 1966.

ments made in documents such as those required under Part 378. The Board also decided on reconsideration to amend §378.2(d) so as to preclude *all* direct air carriers, rather than supplementals alone, from acting as tour operators.

For the reasons set forth in Regulation SPR-14, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest. Ac-

12116

cordingly, the Board hereby amends Part 378 of its Special Regulations (14 CFR Part 378), effective May 13, 1966, in the following respects:

1. By revising §378.2(d) to read as follows:

§378.2 *Definitions.*

* * * * *

(d) "Tour operator" means any person (other than a direct air carrier) authorized hereunder to engage in the formation of groups for transportation on inclusive tours.

2. By revising §378.11(b) to read as follows:

§378.11 *Procedure for obtaining a Statement of Authorization.*

* * * * *

(b) The application shall be signed by a duly authorized officer of both the supplemental air carrier and the tour operator and shall include the Statement of Tour Operator's Qualifications and the Tour Prospectus.[3] In

[3] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willingly

(12116, 12117)

the event of any change in the facts as reflected in the application, an amended application shall be filed no later than five (5) days following such change.

12117

3. By revising §378.12 to read as follows:

§378.12 *Statement of Tour Operator's Qualifications.*

The Statement of Tour Operator's Qualifications shall be in the form set forth in the Appendix. A tour operator who has filed a Statement of Tour Operator's Qualifications in connection with one application may, with respect to subsequent applications, file a statement to the effect that the facts contained in his previously filed Statement of Qualifications have not changed, except as set forth in the later statement.

4. By revising §378.18(a) to read as follows:

§378.18 *Procedure applicable to periods on or after January 1, 1968.*

(a) No inclusive tour or series of tours scheduled to commence on or after January 1, 1968, shall be operated, nor shall any tour operator sell or offer to sell, solicit or advertise such tour or tours, unless there is on file with the Board a Tour Prospectus satisfying the requirements

---

falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. Title 18, U. S. C., §1001.

of §378.13. If a series of tours is to be operated for one tour operator pursuant to one charter contract, the Prospectus may cover the entire series, provided the elapsed time between the commencement of the first tour and the completion of the last tour shall not be over 180 days. The Tour Prospectus shall be filed at least 60 days before the commencement of the tour or tours. Late filing of the Prospectus will not be permitted except for good cause shown.

5. By revising §378.20(a) to read as follows:

§378.20 *Post tour reporting.*

(a) Within 30 days after completion of a tour or in

the case of a series of tours, the last of the series, the supplemental air carrier and tour operator shall jointly file with the Board (Supplementary Services Division, Bureau of Operating Rights) a post tour report. This report shall indicate whether or not the tours as authorized hereunder were, in fact, performed. To the extent that the operations differed from those authorized under §378.11 or described in the Prospectus filed under §378.18, such differences shall be fully detailed including the reasons therefor. However, the making of such an explanation shall not of itself operate as authority for or excuse any such deviation.

6. By deleting page 1 of the Appendix (Verification form).

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended (72 Stat. 737; 49 U. S. C.

(12118)

1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C. 1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 1 to Part 378 effective May 13, 1966.

APPENDIX
VOLUME II

Supreme Court of the United States

OCTOBER TERM, 1967

No. 800

WORLD AIRWAYS, INC., ET AL., *Petitioners,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 946

CIVIL AERONAUTICS BOARD, *Petitioner,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 969

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petition For Certiorari Filed In No. 800, November 7, 1967
Petition For Certiorari Filed In No. 946, December 22, 1967
Petition For Certiorari Filed In No. 969, December 28, 1967

Certiorari granted and consolidated January 29, 1968

INDEX TO APPENDIX

Pages in Certified Records		Appendix Pages
	VOLUME I	
	Relevant Docket Entries	Ia
Docket No. 13795		
115	Notice by CAB that it will proceed with processing of applications for supplemental air service, July 12, 1963	1a
304	Order No. 20573	2a
633	Report of Prehearing Conference, June 2, 1964	17a
4108	Holiday Airways, Inc., HOL-T-4 Testimony of Richard D. Neumann	20a
	World Airways, Inc.:	
6065	World—300	21a
6229	World Form D	23a
6414	World W-5	24a
6622	Bureau of Economic Regulation, BER Index	27a
7174	Joint Intervenors, JI-8	29a
7386	Joint Exhibits of American Flyers Airline, et al., J-211	30a
	Joint Intervenors:	
7788	JI-1080	31a
8084	JI-B	37a
8847	Joint Intervenors' brief to the Examiner March 19, 1965	39a

Pages in Certified Records		Appendix Pages
Docket No. 13795 (Continued)		
10010	Recommended Decision of Examiner, August 27, 1965	44a
10269	Exceptions of Joint Intervenors, September 7, 1965	312a
10878	Brief of Joint Intervenors, September 27, 1965	317a
11275	Answer of Joint Intervenors, September 27, 1965	323a
11359	Oral Argument, October 13 and 14, 1965	325a
11734	Order No. E-23350	332a
11982	Petition for Reconsideration by Joint Intervenors, April 4, 1966	485a
12008	Answer of Joint Intervenors, April 11, 1966	500a
12044	Motion of Joint Intervenors, April 11, 1966	508a
12093	Order No. E-23600	517a
	VOLUME II	
12129	Order No. E-24237	543a
12171	Order No. E-24238	596a
12181	Order No. E-24239	608a
12322	Order No. E-24431	610a

Pages in Certified Records		Appendix Pages
Docket No. 13795 (Continued)		
12324	ER-478, November 22, 1966	613a
12327	ER-479, November 22, 1966	615a
Docket No. 11908		
12335	Order No. E-16023	617a
12348	Notice of Proposed Rulemaking, November 14, 1960 (EDR-21)	619a
12520	Order No. E-17190	636a
12703	Order No. E-17607	644a
	Transcript of Transatlantic Charter Investigation:	
15082	Cross examination of Phillip R. Capellupo (PAA) by Charles A. Hobbs of the American Society of Travel Agents, Inc.	648a
15338	Kenneth L. Briggs (TWA)	651a
16308	United States Overseas Airways, Inc., USOA-106	652a
17575	Trans World Airlines, Inc., TWA 13	653a
19438	Examiner's Decision—Transatlantic Charter Investigation	654a
19553	Appendix B to Examiner's Decision—Transatlantic Charter Investigation	755a
20642	Orders Nos. E-20530 and E-20531 and Supplemental Orders Nos. E-20530 and E-20531	777a

Pages in Certified Records		Appendix Pages
Docket No. 11908 (Continued)		
20868	Petition to Intervene by American Airlines and Others, March 23, 1964	884a
21179	Order No. E-20650	889a
21199	Order No. E-20776	892a
21909	Recommended Decision of Examiner, October 8, 1964	927a
22609	Order No. E-21966	944a
22954	Order No. E-22255	954a
	World Airways, Inc.:	
27329	World R-1	956a
27252	World 403	957a
27352	World R-7	959a
28299	Order No. E-28686	960a
28389	Pan American Airways' Brief, October 7, 1965	963a
28442	Trans World Airlines' Brief, October 8, 1965	968a
28743	Recommended Decision of Examiner, December 22, 1965	976a
29582	Order No. E-24240	1060a
29611	Order No. E-24241	1089a
29618	Order No. E-24242	1097a

INDEX

	Appendix Page
United States Court of Appeals for the Second Circuit	
Opinion, July 20, 1967	1119a
Judgment, July 22 ,1967	1144a
Order on Rehearing, September 29, 1967	1146a
Order Denying Petition for Rehearing En Banc, September 29, 1967	1148a
Order Granting Stay of Issuance of Mandate Under Rule 28(c), October 13, 1967	1150a

Order No. 24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served: September 30, 1966

SUPPLEMENTAL AIR SERVICE PROCEEDING

Docket 13795 *et al.*

Decided: March 11, 1966

Certificate authority to engage in overseas and foreign supplemental air transportation of persons and property for a five-year period, subject to the terms, conditions, and limitations of Parts 208 and 378 of the Board's Regulations, awarded to

(a) American Flyers Airline Corp., between the United States, on the one hand, and points in Canada, Mexico, and the Caribbean, on the other hand;

(b) Johnson Flying Service and Purdue Aeronautics Corp., between the United States and points in Canada;

(c) Modern Air Transport and Zantop Air Transport between the United States, on the one hand, and points in Canada and Mexico, on the other hand;

(d) Capitol Airways and Saturn Airways between the United States and points in the Caribbean;

(12129, 12130)

(e) Southern Air Transport between the United States, on the one hand, and points in the Caribbean and the Transpacific, on the other hand;

(f) Trans International Airlines and World Airways between the United States, on the one hand, and points in the Caribbean, the Transpacific, and Central and South America, on the other hand.

American Flyers, Capitol, Johnson, Modern, Purdue, Saturn, Southern, TIA, World, and Zantop also authorized for an indefinite period to provide charters of persons and property for the Department of Defense in overseas, foreign, and intraterritorial air transportation, subject to certain conditions.

APPEARANCES:

Same as set forth in Board's opinion accompanying Order E-23350, March 11, 1966.

12130

OPINION

BY THE BOARD:

In our Opinion of March 11, 1966 (Order E-23350), we disposed of the applications consolidated into this proceeding insofar as they sought certificates of public convenience and necessity under section 401(d)(3) of the Act, authorizing them to engage in supplemental air transportation between the 50 States. We expressly excluded from consideration there the portions of the applications that sought authority to provide supplemental air service in overseas and foreign air transportation and which, under

section 801 of the Act, are subject to the approval of the President.

In that decision, we found that ten of the applicants were fit, willing, and able, and should be awarded certificates authorizing them to operate civil and military charters with respect to persons and property between the 50 States, with the right to provide split charters and inclusive tour charters in addition to charters as traditionally defined;[1] that three applicants were not fit, willing, and able, and their applications should be denied;[2] and that the record should be reopened for further hearings on the qualifications of the three remaining applicants.[3] Concurrently, we adopted regulations implementing the authority granted and prescribing the limitations thereon.

12131

This opinion deals with the overseas and foreign issues in the case that we did not dispose of in our earlier decision. On those issues, Examiner Robert L. Park, in his recommended decision, found that (1) the qualified applicants should be issued certificates of public convenience and necessity authorizing them to conduct military and civil charter flights in overseas, foreign, and intraterri-

---

[1] American Flyers, Capitol, Johnson, Modern, Purdue, Saturn, Southern, TIA, World, and Zantop.

[2] Conner, Holiday, and Stewart.

[3] ONA, Standard, and Vance. Since the qualification issue upon which we found further hearings necessary goes to the fitness, willingness, and ability of the three carriers for issuance of any type of supplemental authority, we deferred action on their applications for overseas and foreign authority as well as domestic authority.

torial air transportation with respect to persons[4] and property; (2) the authority should include the right to provide split charters and inclusive tour charters; (3) rather than award uniform authority to all applicants as a class, individual carriers should be selected to serve specified overseas and foreign areas; and (4) the authorizations should be for a term of five years.

The areas which the examiner recommended that the individual carriers be authorized to serve are as follows: (1) Johnson and Purdue—Canada; (2) American Flyers, Modern, Vance, and Zantop—Canada and Mexico; (3) American Flyers, Capitol, Saturn, Southern, TIA, and World—the Caribbean area;[5] (4) TIA and World—Central and South America; (5) Southern, TIA, and World—the Transpacific area; and (6) Capitol and Saturn—the Transatlantic area (cargo).

12132

Exceptions to the recommended decision and briefs to the Board have been filed by most of the parties to the proceeding and the Board has heard oral argument.[6] Upon consideration of the record and the contentions of the parties, we find that we are in agreement with the ex-

[4] The examiner's finding did not embrace transatlantic passenger charter authority. Such authority is an issue in the *Reopened Transatlantic Charter Investigation*, Docket 11908 *et al.*, but not in this proceeding.

[5] As used by the examiner, the Caribbean area includes Jamaica, the Bahamas, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, or any other place located in the Gulf of Mexico or the Caribbean Sea.

[6] The parties filing exceptions and briefs are listed in our earlier opinion (Order E-23350).

aminer's findings and conclusions, except in one respect. We have decided that no applicant should be awarded transatlantic cargo authority.[7] Accordingly, except as modified herein, we adopt as our own the findings, conclusions, and recommendations of the examiner on the overseas, foreign, and intraterritorial issues contained in his decision.[8]

As we noted in our opinion in the domestic phase, the examiner, in his thorough and well-reasoned decision, dealt fully with the issues in the case. The arguments of the various parties to the Board are, in major part, simply variations on the arguments they presented to the examiner, and which he considered and properly rejected. We, therefore, will confine our opinion here to a limited number of matters raised on exceptions and the single matter on which we have reached a conclusion different from that of the examiner.

12133

Transatlantic Cargo Authority

We disagree with the examiner's recommendation that Capitol and Saturn, who now hold certificates authorizing them to provide transatlantic passenger charters, also be authorized to provide transatlantic cargo charters. The transatlantic area, in our opinion, presents special considerations not applicable to the other areas in which we are granting cargo authority in addition to passenger authority.

---

[7] Consistent with our action in the domestic opinion, we do not adopt the examiner's findings on the qualifications of ONA, Standard, and Vance for overseas, foreign, and intraterritorial authority.

[8] The recommended decision was attached in its entirety to our earlier opinion (Order E-23350).

The Board has previously authorized Seaboard World Airlines to provide cargo only service across the north Atlantic, and the carrier has been engaged in developing the cargo potential there without the benefit of passenger authority or eligibility for subsidy. Seaboard is not a large carrier, and even though only a small percentage of its total revenues comes from civil cargo charters, the transatlantic is the only area it is authorized to serve, and it is already competing for the cargo traffic there not only with two of our largest carriers, Pan American and TWA, but with fourteen substantial foreign-flag carriers regularly flying the Atlantic.

We recognize that a grant of cargo authority to Capitol and Saturn might afford the two carriers some degree of operating flexibility in their efforts to avoid excessive ferry mileage in their passenger services. However, there is no showing here that this is essential to their passenger operations or that it would make a substantial contribution to the success of those operations. Further, each of the carriers is being given significantly broadened authority under our other awards to them in this case. We find

that benefits which might accrue from the award of transatlantic cargo authority to Capitol and Saturn are insufficient, on balance, to warrant their grant.

Inclusive Tour Charters

In the interstate phase of this proceeding, we affirmed the examiner's finding that the supplemental carriers should be authorized to operate inclusive tour charters.

Such authorization would enable tour operators to charter aircraft from the supplementals for the purpose of marketing packaged tours to members of the general public. The examiner also recommended that such authority be granted in foreign and overseas air transportation. We agree with this recommendation and the reasoning on which it is based.

To a large extent, the exceptions to the recommended decision do not distinguish between the domestic and foreign and overseas issues. These general exceptions have been treated in our domestic opinion, and since no purpose would be served by a repetition of the considerations set forth therein, we will incorporate by reference the inclusive tour portion of that opinion.[9] We also find that the examiner adequately disposed of the contentions relating specifically to foreign and overseas operations. Indeed, we find it appropriate to comment only on the issues of balance of payments.

The certificated route carriers argue that implementation of inclusive tour authority in foreign air transportation will primarily stimulate traffic originating in the United States and destined for foreign countries, rather

than bringing foreign visitors to this country, and consequently the program would have a damaging effect on the U. S. balance of payments position. The record offers no support for this view. Indeed, it is not without significance that the route carriers came forward with no evidence to substantiate their claim. In sharp contrast, there

[9] Order E-23350, pp. 3-21. The examiner's discussion is set forth in the recommended decision at pp. 43-65, 74-76, 81, and 120-130.

is persuasive evidence in the record suggesting that the balance of payments position will not be damaged and may in fact be improved.

The dimensions of the problem of inclusive tours as related to balance of payments can easily be exaggerated. It must be remembered that we are dealing with a group of small air carrier enterprises with limited resources and equipment, as compared with the U. S. and foreign flag route carriers. The supplemental carriers' total civil charter revenues for the year 1964, including both domestic and foreign, amounted to only $17.5 million, and the evidence in this proceeding as to inclusive tours indicates a range of only $6.5 to $10.5 million in the initial year of operations, of which most would be accounted for by domestic tours.[10] Thus, even if we were to make the unlikely assumption that inclusive tours would stimulate only U. S. travel abroad with no foreign travel to this country being generated, the amount of gold outflow involved would be quite small. And when we consider the likelihood that inclusive tours will attract to our shores a vast market which

remains to be tapped, it becomes clear that the balance of payments problem, when placed in proper perspective, has been considerably distorted.

Turning to the generative effect which we believe inclusive tours will have on foreign travel to the United States, we start with the fact that such travel has historically

[10] This of course excludes transatlantic operations. The Bureau's forecast of foreign inclusive tours, excluding the transatlantic, was $917,000 for the first year and $1.8 million for the third year of operations.

been much less in amount than U. S. travel abroad. However, foreign generated travel is growing at a faster rate than U. S. generated travel abroad. As shown in Appendix A, this has been the case since at least 1957. In addition, in 1964, for the first time, foreign generated air travel grew at a faster *absolute* rate than U. S. air travel abroad, amounting to a growth of approximately 700,000 foreign travelers as compared with 630,000 U. S. travelers.

There is considerable reason to believe that the increase in foreign travel to the United States has in significant part been the result of a combination of two factors: higher disposable per capita income in foreign countries, and lower air fares. Since the travel cost to the foreigner is higher in relation to his average income than it is to the American, the foreign traffic is more likely to respond sharply to fare reductions. And evidence submitted in the record, based upon U. S. Department of Commerce surveys in numerous foreign countries, indicates a sizeable demand for travel to this country which can be tapped by lower fare services.

Moreover, it seems clear that foreigners will be particularly attracted by low fare services combined with an all-expense package such as would be available under inclusive tour charters. By assuring lower predetermined travel

costs, such tours would mitigate the foreigners' fear of unknown high costs which they might otherwise encounter in traveling in the United States. The record in the proceeding is replete with evidence as to the tremendous popularity of inclusive tours in Europe, a matter which has been considered by the examiner in great detail in his

recommended decision and which therefore need not be repeated here.[11]

Thus, there is every indication that vigorous promotion of lower fare services both here and abroad would generate at least as many foreign originations as U. S. originations. And there is no reason to believe that the foreign market will not be vigorously promoted. Evidence introduced into the proceeding indicates that U. S. travel agents have facilities available in foreign countries which would be used for promoting tours. Moreover, the supplemental carriers will have strong incentives to develop foreign-generated business. Their needs to maintain and increase their utilization of equipment and expand their civil charter revenues will constitute powerful economic incentives to promote a maximum amount of foreign traffic. Further, they will be well aware of the fact that the authority which we are giving them is of a limited duration, and they will have no assurance of a renewal of that authority if it develops that the tour operations do not adequately promote travel to the United States.[11a]

12138

One final comment on this subject appears appropriate. If U. S. carriers' efforts to promote travel are to be restricted in the interest of the balance of payments policy,

---

[11] See recommended decision, pp. 56-65.

[11a] Moreover, regulations governing inclusive tour charters will require the reporting of data which will enable us to assess the extent to which foreign-generated travel is being promoted. If such data indicate that inbound travel is not being adequately promoted, the Board will be in a position to take necessary action, including the suspension of inclusive tour authority pursuant to section 401(g) of the Act.

we find it inappropriate and inequitable to single out the supplementals as the special target. These carriers are small business enterprises struggling to gain a foothold in air transportation markets. Their ability to compete in these markets is restricted by the limitations on their authority, confined as it is to charter services only. These carriers have proved to be an essential factor in our national defense civil augmentation airlift system, making substantial contributions in time of national crisis. The United States thus has a sizeable stake in their continued survival and viability. Inclusive tour authority will make a contribution to that continued viability. Finally, we believe that it is particularly inequitable to force these carriers to bear the brunt of the balance of payments policy, while the route carriers remain free to promote and stimulate travel abroad to an extent which completely dwarfs any likely future participation by the supplemental carriers in these markets.

12139

Landing Rights

The route carriers contend that a grant of the authority recommended by the examiner would confront the governments of the world with a blanketing of new authority to numerous carriers, that such action would have serious effect upon current and future bilateral negotiations designed to strengthen the operating rights of existing American carriers, and would require bargaining away rights that are necessary for the most effective scheduled American-flag transportation.

Obviously, any additional landing rights that may be necessary will have to be obtained from various foreign

governments before the supplemental carriers can inaugurate service under the foreign authorizations. However, this is not a new or unusual situation, but is, in fact, one that has arisen in many past cases in which awards found required by the public convenience and necessity have involved operations for which we lacked requisite rights from the appropriate foreign governments. The Board has not withheld the grant of certificate authority to U. S. route applicants because inauguration of the services would require additional rights.

The precise effect that any given award may have on the future course of bilateral negotiations or other governmental arrangements must necessarily be conjectural. However, there is nothing here to indicate that the authority being granted the supplemental carriers will have the repercussions that the route carriers fear. The fact is

that only a limited number of carriers are being granted authority to serve each of the foreign countries at issue in the proceeding, and these carriers, by the very nature of their authority, will not be operating over fixed routes or providing regularly scheduled services. We find nothing that would make it necessary or appropriate in this case to depart from the practice that has long been followed in awarding new foreign certificate authority.

Carrier Selection

All of the applicants awarded foreign charter authority challenge the examiner's choice of carriers to serve the

specific geographic areas designated.[12] Essentially, the argument of the individual applicants is not that they should be chosen in lieu of some applicant selected by the examiner, but rather is that they should be given authority to serve certain of the geographic areas in addition to the carriers selected by the examiner.

In selecting the carriers to serve the various geographic areas, the examiner took into consideration such relevant factors as the potential of the markets involved; the operational capability of each applicant as indicated by its size, scope of operations, financial posture, and equipment; the historic experience of the applicant; and the need of a given applicant for authority that would afford it a reasonable opportunity for future growth. We have carefully

12141

considered the objections that have been raised and find that they present nothing that would require or warrant conclusions different from those reached by the examiner. We recognize that certain carriers will be authorized to serve markets in which they have had little or no experience, and other applicants will not be authorized to serve countries they have served in the past.[13] However, a resolution of the carrier selection question requires a weighing and balancing of a number of considerations and the exercise of judgments based upon them. We are satisfied that the

[12] The various applicants also challenge the examiner's failure to award the qualified carriers uniform overseas and foreign charter authority as a class. We agree with the examiner's conclusion that "class" authority should not be granted.

[13] We find unsupported and without merit the contention that various carriers will have no interest in serving, or incentive to promote charter transportation to certain of the countries or areas.

examiner's judgments were reasonable and sound and should not be disturbed.[14]

Qualifications of Applicants

The route carriers, although not questioning the qualifications of the applicants to provide domestic and transborder civil charters or worldwide military charters, attack their "operational" fitness to provide overseas and the more extensive foreign civil charters. They contend that the applicants fail to meet the fitness standards of section 401(a)(3) for the latter services, since they submitted no plans of operation showing proposed frequencies, points to be served, and estimated profit and loss by areas, and demonstrated an absence of both facilities and personnel abroad and (in most instances) the availability of jet

12142

equipment which they assert is required to give international charters public appeal.

It can hardly be seriously contended that the supplemental carriers, who are admittedly qualified to conduct domestic charter operations, services for the military on a worldwide basis, and, whose managements the interveners concede "to be excellent,"[15] are operationally unfit to conduct foreign and overseas charters. We are not here dealing with nonoperating applicants seeking fresh entry into the field of air transportation, but with established carriers who have successfully engaged in air transportation for a

[14] The argument by certain of the applicants for a redescription of the geographic areas marked out by the examiner do not warrant any change in his designations.

[15] Oral Argument, Tr. 308.

number of years. The Board has not customarily required that certificate applicants for new route authority establish their qualifications in terms of separate and independent proof pertaining to every kind of service they will be able to provide under their certificates. We find it neither necessary nor appropriate to require the applicants here to submit detailed plans and estimates of their proposed operations in overseas and foreign air transportation as separate criteria of operational ability.

Upon consideration of the record, we conclude that those applicants which we found qualified in our opinion in the domestic phase of the case to provide services between the 50 States, are likewise fit, willing, and able to perform the transportation being authorized in the overseas and foreign fields.[16]

12143

Terms and Conditions

The matter of the terms and conditions to be attached to the supplemental operating authority was considered at some length in the recommended decision and in our decision in the domestic phase of the case. The certificates issued contemporaneously herewith will be subject to the same basic regulatory provisions as those applicable to domestic operations. Accordingly, we are concurrently issuing appropriate amendments to Parts 208 and 378 to make them applicable to the foreign and overseas certificates.

---

[16] The applicants found unqualified for an award of domestic authority are *a fortiori* unqualified for an award of broader and more demanding overseas and foreign authority.

(12143, 12144)

We have considered the remaining contentions of the parties and their exceptions to the recommended decision and find that, except as indicated herein, they should not alter the results we have reached.

Accordingly, in view of all of the foregoing, including the findings previously set forth by the Board upon the issues heretofore determined herein, and upon consideration of the record, we find that the public convenience and necessity require:

1. That certificate authority to engage in overseas and foreign supplemental air transportation of persons and property for a five-year period be granted to

(a) Johnson and Purdue between points in the United States and points in Canada;

12144

(b) American Flyers, Modern, and Zantop between points in the United States, on the one hand, and points in Canada and Mexico, on the other hand;

(c) American Flyers, Capitol, Saturn, Southern, TIA, and World between points in the United States and points in the Caribbean;[17]

(d) TIA and World between points in the United States, on the one hand, and points in Central and South America, on the other hand;

---

[17] For the purpose of this proceeding, the Caribbean shall be defined to include points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea.

(e) Southern, TIA, and World between points in the United States and points in the Transpacific.[18]

2. That the foregoing carriers also be authorized for an indefinite period to provide charters of persons and property for the Department of Defense in overseas, foreign, and intraterritorial air transportation, subject to certain conditions.[19]

We further find:

1. That the carriers listed above are each citizens of the United States within the meaning of the Act, and are fit,

willing, and able properly to perform the supplemental air transportation hereinabove authorized to be performed by each of them and to conform to the provisions of the Act and the rules, regulations, and requirements thereunder.

2. That the public interest requires the amendment of Part 378 of the Special Regulations and Part 208 of the Economic Regulations effective upon the effective date of the certificates to be issued herewith.

3. That, except to the extent otherwise indicated herein and in our previous order, all applications and motions involved in this proceeding should be denied.

---

[18] For the purpose of this proceeding, the Transpacific shall be defined to include American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia and Asia as far west as longitude 70 degrees west via a Transpacific routing.

[19] We are revising the certificates attached to the recommended decision so as to delete "on a planeload basis" in paragraph 2 since charters for the Department of Defense are not limited to planeload charters.

(12145, 12146)

Appropriate orders will be entered.

Vice Chairman MURPHY and Member MINETTI concurred in the above opinion. Member GILLILLAND concurred and dissented, filing the attached statement. Chairman MURPHY and Member ADAMS did not take part in the decision.

12146

GILLILLAND, MEMBER, CONCURRING AND DISSENTING:

For the reasons stated in the dissent attached to Order E-23350, March 11, 1966, supplemental air carriers should not be authorized to operate all-expense tours in foreign air transportation.[1] I will add two observations.

The Board concludes that all-expense tours will have little or no effect upon balance of payments. If the new program is to accomplish anything it will involve wide participation by tour operators and their agents who have little or no experience in generating foreign air travel to the United States. These persons, lacking knowledge, experience, facilities, and sufficient motivation to overcome such limitations, will certainly not produce as much travel to the United States as from it, or as much expenditure of foreign funds within our country as of United States funds abroad. Such results have not yet been reached by the air carriers long in the market, which suffer under no similar disadvantages, and despite major efforts in that direction. There can be no doubt that the program will have a significant adverse effect on the balance of payments.

---

[1] Examples of regularly scheduled transportation authorized to tour operators under this decision are: New York-Caracas, Rio de Janeiro, Buenos Aires, New York-West Coast-Honolulu-Tokyo.

Furthermore, the Board ignores the effect upon bilateral air route negotiations, which are difficult enough in any event. The complicating effect of existing supplemental authorizations has already been made manifest in several bilateral negotiations, as is well known to all participants therein. The new program will complicate the matter fur-

ther, and to the prejudice of the foreign authorizations of our regularly certificated scheduled carriers which are essential to the integrity of our international route system.

/s/ WHITNEY GILLILLAND

12148

APPENDIX A

(See opposite) ☞

AIR TRAVELERS BETWEEN THE UNITED STATES
AND OTHER COUNTRIES BY CITIZENSHIP
(thousands of travelers both ways) 1/

	1957	1958	1959	1960	1961	1962	1963	1964
Foreigners	1,080	1,340	1,580	1,860	1,950	2,240	2,390	3,058
Americans	2,170	2,450	2,760	3,040	3,110	3,510	3,960	4,598

INCREASES

	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
Foreigners	260	240	180	90	290	150	668
Americans	280	320	280	70	400	450	638

1/ Exclusive of travel over land borders (except Mexican air travel since January 1958), crewmen, military personnel, and travelers between the United States and its possessions.

Source: U. S. Department of Justice, Immigration and Naturalization Service.

(12149)

12149

Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Southern Air Transport, Inc., Trans International Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That all applications consolidated herein for supplemental certificates insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession heretofore filed by Conner Air Lines, Inc., Holiday Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc., be and they hereby are denied.

4. That, except to the extent otherwise indicated, all applications consolidated herein for supplemental certifi-

cates, insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession, heretofore filed by the carriers listed in paragraph 1 of this order be and they hereby are denied.

5. That this order shall be effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

September 27, 1966

(12151)

12151

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) points in Canada and Mexico, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

12152

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or here-

(12152)

after specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

12153

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same terri-

(12153, 12154)

tory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

12154

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

(12155)

12155

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

JOHNSON FLYING SERVICE, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

(12155, 12156)

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the Canadian Government such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

12156

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

(12156)

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

12157

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

MODERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regu-

lations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

12158

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board,

either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

(12159)

12159

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

PURDUE AERONAUTICS CORPORATION

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regu-

lations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the Canadian Government such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

12160

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board,

(12160)

either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

12161

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same terri-

(12161, 12162)

tory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

12162

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or here-

after specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

(12163)

12163

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

SOUTHERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a trans-pacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the

Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

12164

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(12164)

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

12165

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the

(12165, 12166)

Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. In overseas and foreign air transportation, and in-air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

12166

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges

granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

(12167)

12167

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a trans-pacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the

Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

12168

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the

(12168)

privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

12169

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

ZANTOP AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's

(12169, 12170)

Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

12170

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however,* That prior to the date on which this certificate would otherwise become effective the Board,

either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24237.

(12171)

12171

Order No. E-24238

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966
Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 208 and 378 of the Board's Regulations, which are attached hereto and made a part hereof.[1]

2. That said amendments shall be effective on November 26, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

[1] For administrative convenience we have combined into a single amendment to Part 378 the revisions required by the decision in the instant proceeding as well as the decision in the *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase), Docket 11908 *et al.*

12172

Regulation No. ER-474

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Amendment No. 2 to Part 208
Effective: November 26, 1966
Adopted: March 11, 1966

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN CERTIFICATED SUPPLEMENTAL AIR TRANSPORTATION

Part 208 of the Board's Economic Regulations (14 CFR Part 208), which contains, *inter alia,* certain terms, conditions and limitations of interim certificates issued pursuant to section 7 of Public Law 87-528 and of certificates issued pursuant to section 401(d)(3) of the Act, was revised and reissued[1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding,* Docket 13795 *et al.*[2] In order to correspond with the

[1] Regulation ER-454, adopted on March 11, 1966, and published in 31 F. R. 4771.

[2] Order E-23350.

(12172, 12173)

scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to authorizations to perform interstate air transportation.[3]

To correspond with authorizations being awarded as a result of the Board's final decision in the foreign and overseas phase of the *Supplemental* case,[4] which is being issued

12173

concurrently herewith, we are amending Part 208 to expand its coverage to certificated supplemental overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceeding, further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 208 of its Economic Regulations (14 CFR Part 208), effective November 26, 1966, as follows:

1. Amend the table of contents by adding §208.32a and by revising §208.33 to read as follows:

208.32a Flight delays and substitute air transportation (foreign).

208.33 Flight delays and substitute air transportation (interstate and overseas).

---

[3] Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District or Columbia.

[4] Order E-24237.

2. Amend §208.3 by revising paragraphs (c) and (t) thereof to read as follows:

(c) "Supplemental air transportation" (other than operations subject to Part 295 of this subchapter) means charter flights in air transportation performed pursuant to (1) an interim certificate or authorization issued under section 7 of Public Law 87-528, or (2) a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supplemental air transportation of persons and property between any point in any State of the United States or the District of Columbia, and any other point in any State of the United

12174

States or the District of Columbia (exclusive of air transportation within the State of Alaska) or in foreign or overseas supplemental air transportation.

(t) "Substitute service" means the performance by an air carrier of foreign or overseas air transportation, or air transportation between the 48 contiguous states, on the one hand, and the state of Alaska or Hawaii, on the other hand, in planeload lots pursuant to an agreement with another air carrier to fulfill such other air carrier's contractual obligation to perform such air transportation for the Department of Defense and when the performance of such air transportation is not to take place during a period longer than three weeks.

3. Amend §208.32(d) to read as follows:

§208.32 *Tariffs and terms of service.*

• • • • •

(12174, 12175)

(d) Each and every contract for a charter to be operated hereunder shall incorporate the provisions of §§208.10 through 208.15, inclusive, and 208.32a, 208.33 and 208.33a where applicable, concerning insurance and substitute transportation.

4. Add a new §208.32a entitled "Flight delays and substitute air transportation (foreign)" to read as follows:

§208.32a *Flight delays and substitute air transportation (foreign).*

Supplemental air carriers shall assume, and publish as part of the rules and regulations of their tariffs applicable to passenger service in foreign air transportation, the following obligations without prejudice, and in addition, to any other rights or remedies of passengers under applicable law:

12175

(a) *Substitute air transportation.*

(1) On all charter flights, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this paragraph.

(2) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air

transportation for the charter group on another charter flight, operated by any other carrier or foreign air carrier.

(3) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(4) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this paragraph, periods of delay caused by the prohibition of flights from the airport of departure because of weather or other operational conditions shall be excluded

if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness posted at such airport.

(b) *Incidental expenses.*[5]

(1) On all charter flights bound from a point outside the continent where the charter originated to the point where

[5] Although the requirements with respect to providing incidental expenses are made expressly applicable only to the return leg of a charter flight, the air carriers are expected, in the case of delay in departure of the originating leg of a flight, to furnish such incidental expenses to charter passengers whose homes are not located within a reasonable distance from the point of origination of the charter.

it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this paragraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares.

(2) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00 shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period

of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled departure time, such payments shall be made in equal installments of $4.00 for each further six-hour period of delay, or any fractional part thereof: *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of paragraph (a) of this section.

5. Amend the title of §208.33 to read as follows:

§208.33 *Flight delays and substitute air transportation, (interstate and overseas).*

6. Amend §208.302(b) to read as follows:

§208.302 *Terms of service.*

* * * * *

(b) The terms of service prescribed in §§208.10 through 208.15, inclusive, 208.32(d), 208.32a, 208.33 and 208.33a shall be applicable in the case of single entity charters.

(Section 204(a), 72 Stat. 743, 49 U. S. C. 1324. Interpret or apply secs. 401(d)(3), 401(n), 407 and 417 of the Federal Aviation Act, 76 Stat. 143, 49 U. S. C. 1371; 76 Stat. 144, 49 U. S. C. 1371; 72 Stat. 766, 49 U. S. C. 1377; 76 Stat. 145, 49 U. S. C. 1387; and sec. 7 of Public Law 87-528, 76 Stat. 146.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 208 effective May 13, 1966.

(12178)

12178

Regulation No. SPR-16

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Special Regulations
Amendment No. 2 to Part 378
Effective: November 26, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN AIR TRANSPORTATION

Part 378 of the Board's Special Regulations (14 CFR Part 378), which contains the regulatory provisions governing the operation of inclusive tour charters, was originally issued[1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding,* Docket 13795, *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to inclusive tours in interstate air transportation.

---

[1] Regulation No. SPR-14, adopted March 11, 1966, and published in 31 F. R. 4779.

[2] Order E-23350.

To correspond with authorizations being awarded as a result of the Board's final decisions in the foreign and overseas phase of the *Supplemental* case[3] and in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et al.*,[4] which are being issued con-

12179

currently herewith, we are amending Part 378 to expand its coverage to inclusive tours in overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceedings, and because parties to the rule making were heretofore given the opportunity to comment on this matter,[5] further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 378 of its Special Regulations effective November 26, 1966, as follows:

1. By revising §378.1 to read as follows:

---

[3] Order E-24237.

[4] Order E-24240.

[5] Part 378 as originally proposed pertained to interstate and *overseas* air transportation (Notice of Proposed Rule Making SPDR-6, January 5, 1965, 30 F. R. 281). Moreover, the proposed regulation was amended to cover *foreign* air transportation (Supplemental Notice of Proposed Rule Making, SPDR-6B, October 11, 1965, 30 F. R. 13077). Comments concerning both of these Notices were received, as set forth in SPR-14, *supra*, and have been considered by the Board.

(12179, 12180)

§378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this regulation shall not be construed as limiting any

other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

2. By revising §378.2(a) to read as follows:

§378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended, (72 Stat. 737; 49 U. S. C. 1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C.

1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 378 effective May 13, 1966.

(12181)

12181

Order No. E-24239

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record and on the basis of the findings and conclusions set forth in the Board's decision of March 11, 1966, Order E-23350, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the interim certificates and interim authority for supplemental air service, to the extent not previously ordered terminated by Order E-23350, March 11, 1966, shall terminate with respect to each of the carriers whose names are set forth in paragraph 1 of Order E-24237, issued con-

temporaneously herewith, upon the effectiveness of the certificates respectively issued thereunder.

2. That this order shall be effective upon the date of the approval by the President of the United States of Order E-24237, issued contemporaneously herewith.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

12322

Order No. E-24431

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 22nd day of November, 1966

Docket 13795, *et al.*

SUPPLEMENTAL AIR SERVICE
PROCEEDING

Docket 11908, *et al.*

REOPENED TRANSATLANTIC CHARTER
INVESTIGATION

ORDER DENYING RECONSIDERATION

By Orders E-24237 through E-24242, issued on September 30, 1966, following Presidential approval in the above-entitled proceedings, including the all-expense tour phase of Docket 11908, the Board granted certificate authority to various supplemental air carriers to engage in civilian and military charter flights, including inclusive tour charters, with respect to persons and property[1] in the foreign and

[1] Those carriers granted transatlantic authority, however, were not authorized to operate cargo charters.

overseas areas specified in the respective certificates. The foregoing authority was granted for a five-year term from the effective date of the certificates (November 26, 1966), with the exception of the transatlantic certificates which expire on April 18, 1969, in order to coincide with the authority previously granted to Capitol Airways and Saturn Airways in that area.[2]

Petitions for reconsideration of the above Board orders, and for other relief, have been filed by various parties.[3] Answers in support of, or in opposition to, the petitions have also been filed.[4]

12323

Upon consideration of the aforesaid petitions, we find that the matters set forth therein do not establish error in the Board's decisions or otherwise demonstrate that the relief requested is warranted.[5]

---

[2] See Orders E-20530 and E-20531, February 24, 1964.

[3] Capitol Airways, Johnson Flying Service, Modern Air Transport, Overseas National Airways, Saturn Airways, Trans Caribbean Airways and Zantop Air Transport.

[4] American Flyers Airline, Bureau of Operating Rights, Capitol Airways, Overseas National Airways, Pan American World Airways, Trans Caribbean Airways, Trans World Airlines, Vance International Airways, and Zantop Air Transport. In addition, a late-filed answer was submitted by Seaboard World Airlines, and a reply to the Bureau's answer was filed by Saturn, both of which we have determined to accept.

[5] The petitions for reconsideration filed by Overseas National Airways and Capitol Airways also requested that certain amendments be made to Parts 208 and 295 of the Board's Economic Regulations. These matters are treated separately in Regulations ER-478 and ER-479, which are being issued concurrently herewith.

(12323)

ACCORDINGLY, IT IS ORDERED THAT:

1. The motions of Seaboard World Airlines and Saturn Airways for leave to file otherwise unauthorized documents be and they hereby are granted; and

2. The petitions for reconsideration and other relief filed herein be and they hereby are denied.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

12324–12326

[Reg. No. ER-478]

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Substitute Air Transportation; Foreign

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 22d day of November 1966.

In conjunction with its decision in the foreign and overseas phase of the Supplemental Air Service Proceeding, Docket 13795, et al.,[1] the Board concurrently amended Part 208 of its Economic Regulations, which contains the provisions governing the charter operations of certificated supplemental air carriers except those rules applicable to inclusive tour charters, to expand the coverage of that regulation to foreign and overseas air transportation.[2] In its petition for reconsideration of the above decision, Overseas National Airways requests that §208.32a as adopted therein[3] be amended (1) to exclude those delays caused by the prohibition of flights to, as well as from, the airport of departure because of weather or other operational conditions, and (2) to delete the requirement that the delay will be excluded only if it occurs while the air carrier has

[1] Orders E-24237, E-24238, and E-24239, issued on Sept. 30, 1966.

[2] Regulation ER-474, which was attached to and incorporated in the aforesaid Board decision.

[3] Section 208.32a provides, inter alia, that following a delay of 48 hours in the departure of a charter flight substitute air transportation must be provided.

an airworthy aircraft available at the departure airport. The only reply to ONA's petition was filed by the Board's Bureau of Operating Rights, which concurred in the first proposal but made no comment with respect to the second.

On reconsideration, we have determined to amend §208.32a in the first respect set forth above in order to expand the exculpatory effect of that provision to situations where the carrier is prevented by weather or other operational conditions from positioning an aircraft at the airport of departure. However, we shall deny ONA's petition with respect to its second request since it is not unreasonable in our view to require a carrier to maintain an aircraft in operational readiness during the period of delay.[4]

For the reasons set forth in Regulation ER-474, the Board finds that further notice and public procedure hereon are not in the public interest. Accordingly, the Board hereby amends Part 208 of its Economic Regulations (14 CFR Part 208), effective November 26, 1966.

---

[4] If ONA's second proposal were adopted, a carrier could commence maintenance on an aircraft during a period of delay caused by adverse weather and, if the weather suddenly abated, the aircraft might not be in condition to immediately depart.

12327-12329

[Reg. No. ER-479]

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

Definitions; Charter Flight

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 22d day of November 1966.

In conjunction with its decision in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, et al.,[1] the Board amended §295.2(b) of its Economic Regulations to expand the definition of transatlantic "charter flight" to include inclusive tour charters.[2] Subsequent to the adoption of the above amendment (ER-475) on March 11, 1966, but prior to its issuance on September 30, 1966, the Board issued a separate amendment (ER-467)[3] revising §295.2(b) so as to authorize the transatlantic supplemental air carriers to furnish free and reduced rate transportation to employees of other carriers under certain conditions. Since ER-475 does not include the language adopted in ER-467, it now becomes necessary to amend §295.2(b) so as to incorporate the provision concerning free air transportation.

---

[1] Orders E-24240 and E-24241, issued on Sept. 30, 1966.

[2] Regulation ER-475, which was attached to and incorporated in the above orders.

[3] ER-467 was adopted on June 24, 1966.

(12327-12329)

Capitol Airways in its petition for reconsideration of Order E-24241 and Regulation ER-475, issued on September 30, 1966, has requested that Part 295 be amended so that foreign as well as domestic persons would be authorized to become tour operators. This matter was not litigated in the reopened proceeding and it raises special problems as to the extent to which the Board should assert jurisdiction over and regulate foreign tour operators. Accordingly, we will defer the matter for future consideration in a rule making proceeding.

Inasmuch as the regulation involved herein involves only an administrative correction, we find that further notice and public procedure hereon are unnecessary and not in the public interest. Accordingly, the Board hereby amends §295.2(b) of its Economic Regulations, effective November 26, 1966.

Order No. E-16023

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 14th day of November, 1960

Docket 11908

TRANSATLANTIC CHARTER
INVESTIGATION

ORDER OF INVESTIGATION AND CONSOLIDATION

As detailed in the Notice of Proposed Rule Making issued contemporaneously herewith (EDR-21, Docket 11907, Part 295), we have concluded that the continuing development of transatlantic passenger charter transportation warrants review in a formal proceeding to determine whether the public convenience and necessity require a more permanent authorization of transatlantic charter service by air carriers not possessing certificated route authority for individually ticketed passenger service across the Atlantic. Our order herein institutes such an investigation and directs consolidation therewith of pending applications for certificates of public convenience and necessity to perform transatlantic passenger charter flights.

(12335, 12336)

THEREFORE, IT IS ORDERED:

1. That an investigation, Docket 11908, be and hereby is instituted to determine whether the public convenience and necessity require the certification of one or more air carriers to conduct transatlantic passenger charters from or to points in the United States and, if so, under what terms and conditions;

2. That the applications of the following named carriers in the dockets noted be and hereby are consolidated with the investigation instituted herein by ordering paragraph No. 1:

Applicant	Docket No.
Overseas National Airways, Inc.	8056
United States Overseas Airlines, Inc.	8951

12336

3. That this proceeding be set down for prehearing conference before an examiner of the Board at a time and place hereafter to be designated;

4. That this order be served on all supplemental air carriers, on all applicants for supplemental air carrier authority, and on all other air carriers holding certificates of public convenience and necessity.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

/S/ ROBERT C. LESTER
Robert C. Lester
Secretary

(SEAL)

EDR-21

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Docket No. 11907
Dated: November 14, 1960

PART 295—TRANSATLANTIC CHARTER TRIPS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Civil Aeronautics Board has under consideration proposed amendments of Part 295 of its Economic Regulations to eliminate the requirement of prior Board authorization or approval of transatlantic passenger charter flights falling within the scope of this regulation.

This regulation is proposed under the authority of Sections 204(a) and 416 of the Federal Aviation Act of 1958 (72 Stat. 743 and 771; 49 U. S. C. 1324 and 1386).

Interested persons may participate in the proposed rule making through submission of ten (10) copies of written data, views or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington 25, D. C. All relevant matter in communications received on or before December 16, 1960, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available on and

after December 16, 1960, for examination by interested persons in the Docket Section of the Board, Room 711,

Universal Building, 1825 Connecticut Avenue, N. W., Washington, D. C.

By the Civil Aeronautics Board:

/s/ ROBERT C. LESTER
Robert C. Lester
Secretary

(SEAL)

EXPLANATORY STATEMENT

There are now three classes of air carriers which provide the bulk of transatlantic passenger charter service. These are the United States flag route carriers which are certificated to carry passengers across the Atlantic, certain foreign air carriers, and the United States supplemental and cargo carriers. Prior to 1955, only the first two classes were available to provide charter service for the traveling public. In that year, the Board issued a new policy—called the Transatlantic Charter Policy—which gave rise to a new category of carriers which provide additional charter service. In adopting a policy of granting individual exemptions to the supplemental air carriers and the certificated cargo route carriers for transatlantic charter service, the Board was moved in part by indications that during the peak travel season, it was difficult if not impossible to obtain an aircraft charter. Since adoption of

12350

the Charter Policy, there has been a substantial and sustained growth in the use of charter service in which this new class of carrier has played a substantial part.[1]

For example, in 1957, there were 524 one-way transatlantic charter flights carrying approximately 38,700 people during the charter season April 1 through September 30. In the current year comparable figures are 1,532 one-way flights carrying approximately 129,600 people. The growth of charter service has more than kept pace with normal traffic growth. Since 1957 charter traffic itself has been growing at a rate which is believed to approach 50 percent each year. During this same period, individually-ticketed traffic across the Atlantic has also increased rapidly—its growth rate exceeds 20 percent annually. In 1957, we estimate that charter flights carried about 6½ percent of the total transatlantic traffic in the April-September period; in 1960, the figure exceeded 11 percent.

The Board has had as its major objective the development of the large potential mass international travel market in the United States without undue diversion from the United States and foreign flag operators, and in particular from their regularly-scheduled, individually-ticketed services. In furtherance of this objective, the Board has from

12351

time to time redefined the standards for charter eligibility and established appropriate administrative techniques to inform the public and to obtain their compliance in order

[1] It is questionable, however, whether the aircraft supply has ever met the service demand; it is still difficult to obtain aircraft charters in the peak direction or season.

(12351, 12352)

to assure the performance of the flight by the carrier and the obtaining of necessary foreign landing rights therefor. Thus, in 1957, we amplified the general criteria for charter eligibility which we followed in 1955 and 1956. These criteria were largely those that had previously been developed by the carriers and the Board, and which were embodied in IATA Resolution 045, the requirements established by the national flag route operators for their own operations. In 1958, we adapted these standards to specific criteria more susceptible of precise application which have since been the cornerstone of our policy. And in 1959, we embodied them with minor modification in an Economic Regulation (Part 295), giving them greater stability and legal effect than theretofore. In 1959, we also concluded the *Foreign Off-Route Charter Investigation,* Docket 7173, in which foreign air carriers were for the first time authorized to perform off-route charters in air transportation. In addition to amending their permits to provide this authority, we promulgated a new Economic Regulation (Part 212) establishing as guides for issuance of a charter authorization standards similar to those in Part 295. In 1960, after the IATA carriers had finally undertaken, upon our request, to provide more definitive and enforceable stan-

12352

dards for their own operations, we undertook to modify Parts 295 and 212 in order to conform our requirements in substantial respects to those now provided in IATA Resolution 045.[2] Consequently, at the present time charter

[2] It was also necessary to impose as conditions to approval of Resolution 045 certain standards, especially with respect to travel agency participation in charters, which IATA had not provided for in the Resolution.

requirements for all classes of carriers are substantially similar.

During the developmental period of this program, the Board has considered it necessary and desirable to retain power to disapprove individual charter flights arranged by the supplemental and certificated cargo route carriers. Basically, we have been concerned that there not unwittingly develop any such widescale violation of appropriate charter requirements as would lead to a breakdown in the proper distinction between charter and individually-ticketed service, and thus have a serious adverse effect on the operations of the regularly scheduled services.[3] It now appears to the Board that standards for charter eligibility are sufficiently precise and understandable as to preclude inadvertent violations on any wholesale basis. Under such

12353

circumstances, the Board no longer believes that this reason warrants retention of the requirement for approval of individual charter flights.

As we have heretofore noted, there has been a substantial and sustained growth of transatlantic charter traffic by all classes of carriers participating in it. However, even in the recent summer season when the supply of aircraft for charters was substantially increased as a result of the jet reequipment program and the availability of otherwise idle piston aircraft capacity, there was no apparent oversupply of charter service. In fact, the contrary appeared to

[3] The Board does not believe that a carrier could successfully undertake deliberately to flout its requirements for charter eligibility without such fact becoming public knowledge and subjecting the violator to appropriate and effective sanctions.

be the case.[1] Recognition must be given to the fact that the route carriers may over the long run find it uneconomic to maintain appropriate facilities to operate piston aircraft merely to serve a seasonal charter market. And as a practical matter, jet capacity and costs may be such as to affect substantially the potential of jet aircraft for charter service. Under all these circumstances, it appears to be in the public interest for the Board to set down for hearing an investigation into whether the public convenience and necessity require the authorization, by certification or otherwise, of one or more carriers to provide transatlantic passenger charter service.

12354

Pending a final determination in this proceeding, we could as a matter of policy continue our current policy of authorizing each charter flight by granting a special exemption order. However, as we have previously noted, we are now satisfied that retention of the power to disapprove individual charter flights—which is the principal substantive purpose of this procedure—is no longer administratively necessary. Moreover, we are concerned that the economic and administrative burden which this procedure imposes on the relatively small carriers which participate in this activity is so substantial and disproportionate as to greatly handicap them in their ability to operate these services profitably. In this connection, the Board notes

[1] One foreign flag carrier sought extraordinary relief from the limitations of Part 212 on off-route charters on the ground that the charterers would otherwise be unable to be accommodated. No carrier challenged this contention. Moreover, to our knowledge carriers which made a belated entry into the market had no difficulty in obtaining a substantial volume of charter business.

that the identity of carriers participating in this traffic has shifted from year to year. In prior years, the certificated cargo carriers were major factors in the market; in recent years their efforts have greatly diminished. Again, supplementals which in the last season were among the larger participants had either not participated in the market before or only in token amounts. In this connection, we have been advised that both the cost of processing applications for approval of individual charter flights and the disadvantage of adherence to a procedure not required of competitors[5] have been substantial factors in causing with-

12355

drawal from the market of seemingly successful operators. Further, we recognize that at best the market is a highly seasonal one.[6] Consequently, from an economic standpoint, its attractiveness is limited. Under these circumstances, relatively small impediments can loom as large factors in a decision to devote resources to it.

These are reasons which have led us to set this matter down for hearing and possible award of certificate authority to one or more carriers who would undertake on a sustained basis to meet such need as may exist for charter services additional to those provided by the regular route operators.[7] They are also matters which, in our judgment,

---

[5] Neither the U. S. flag operators, nor the foreign flag operators for service over their route need request individual charter approval.

[6] We, of course, recognize that the fluctuations in MATS' policy and its effect on the availability of backhauls affect the economy of charter service and the desirability of participation in this market.

[7] Order E-16023, issued simultaneously herewith, instituting a Transatlantic Charter Investigation, Docket 11908.

warrant our granting an exemption from the provisions of Section 401 of the Act, as is hereinafter detailed, pending a final determination in this proceeding.[8]

For the period beginning April 1, 1961, we propose issuing exemption orders limited in duration to no more than 180 days, authorizing the holder to conduct transatlantic charter service in accordance with the requirements

12356

of Part 295 of the Economic Regulations. Such orders will be issued only to persons who are applicants for transatlantic charter authority, whose applications have been consolidated into the *Transatlantic Charter Investigation*, and who are actively prosecuting such applications. We shall also require each applicant to present for our consideration the scope of the charter service to be provided and the program employed to screen charters for proper compliance with Part 295. Each such application will, upon request, be subject to renewal pending final disposition of the investigation.

In order to accomplish this change the present provisions of Part 295 relating to application for operating authority and to reporting, which are geared to individual approval of each charter agreement, will require modification to reflect the new system of limited temporary blanket authorizations. Sections 295.13 and 295.40 which provide for applications for individual charter authority will be eliminated and replaced by new Section 295.5 which contains the requirements for application for the new exemption author-

[8] Compare *Transatlantic Cargo Case*, 21 C. A. B. 671 (1955); *Air Freight Case*, 10 C. A. B. 572 (1949).

ity. All provisions which relate to Board approval of specific aspects of charters not generally permitted under this Part (such as Sections 295.33(a) and 295.35(b)(3)) are being omitted. The effect of this is that air carriers may not perform charters which do not comply with this Part in every respect unless a waiver has been granted by the Board pursuant to Section 295.3 of this Part.

12357

Similarly, Section 295.17 which required individual post-flight reports to the Board is being eliminated. However, such information will have to be filed with the carrier by the travel agent and the chartering group as before. Insofar as Board requirements are concerned, the revised provisions of Part 295 will necessitate only the following report by the carrier within 15 days after the close of each month concerning charter trips operated during such month: (a) date of trip; (b) points served; (c) number of round trip and one-way passengers; (d) name of chartering organization; (e) description of chartering organization disclosing basis for conclusion that group is bona-fide; (f) name of travel agent; (g) basis for construction of tariff charge. These provisions will be found in new Section 295.6 which also contains the necessary record retention requirements.

12358

PROPOSED RULE

It is proposed to amend Part 295 of the Board's Economic Regulations, 14 CFR Part 295, as amended,

1. By amending Section 295.1 as follows:

(12358, 12359)

a. Amend the first sentence of Section 295.1 to read: "This Part establishes the requirements governing applications for, and operations under, exemption orders authorizing, for periods up to 180 days, the performance of pro-rata and/or single entity charter flights for transatlantic passengers by United States flag air carriers other than carriers certificated to provide unlimited individually ticketed passenger service over designated routes."

b. Amend the next to last sentence of Section 295.1 to read: "Operations under any such individual exemption authorizing the performance of transatlantic passenger charter flights shall be conducted . . ." (remainder unchanged).

2. By amending the last two sentences of Section 295.2(j) to read: "Presumptively persons are not *bona fide* members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and employees of a single school, and immediate families

12359

thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

3. By amending the first sentence of Section 295.3 to read: "A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates, provided such a waiver . . ." (remainder unchanged).

4. By inserting new Sections 295.5 and 295.6 to read:

§295.5. *Application for exemption authority.* Proceedings on applications for exemption authority pursuant to Section 416(b) of the Federal Aviation Act of 1958 to conduct passenger charter flights (pro-rata and/or single entity charters) in foreign air transportation shall be governed by Rules 400 to 409 of Part 302 of the Board's Procedural Regulations, subject, however, to the following additional or different Provisions:

(a) Applications may be filed only by air carriers which are applicants in good standing for transatlantic charter

authority in *Transatlantic Charter Investigation,* Docket 11908, instituted by Board Order E-16023 of November 14, 1960.

(b) Applications for exemption authority shall be filed with the Board at least 60 days prior to the proposed first flight under such authority.

(c) The application shall state whether authority to fly pro-rata charters, or single entity charters, or both, is requested; the scope of the charter service to be provided; and the program to be employed for screening charters for proper compliance with Part 295.

(12360, 12361)

(d) Copies of the application shall be served on each direct air carrier certificated to provide unlimited transatlantic passenger service.

§295.6 *Reporting and record retention.*

(a) Fifteen days after the end of each calender month, each carrier holding operating authority pursuant to this Part shall file with the Board's Bureau of Air Operations a report setting forth the following information pertaining to each charter flight performed during said month pursuant to such authority:

(1) Date of trip;

(2) Points served;

(3) Number of round-trip and one-way passengers;

12361

(4) Name of chartering organization;

(5) Description of chartering organization disclosing basis for conclusion that the group is *bona fide;*

(6) Name of travel agent; and

(7) Basis for construction of tariff charge.

(b) Prior to performing any charter flight pursuant to this Part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information."

(c) Air carriers holding operating authority pursuant to this Part shall preserve the following records for the periods specified below. Microfilms may be substituted for retention of the original records at any time.

Category of records	Period to be retained
1. Every charter contract	2 yrs.
2. Every "Statement of Supporting Information"	2 yrs.
3. All post-flight reports and vouchers submitted therewith	2 yrs.
4. All passenger manifests filed by charterers	2 yrs.
5. Proof of the commission paid to any travel agent by the carrier	2 yrs.

12362

5. By amending the first sub-title of Subpart A to read: "Requirements Relating to Air Carriers."

6. By amending Section 295.12 to read: *"Pre-trip notification.* Upon a charter flight date being reserved by the air carrier or its agent, the carrier shall provide the prospective charterer with a copy of this Regulation, Part 295.[1] [Footnote 1 to remain unchanged]. The charter contract shall include a provision . . ." (remainder as now contained in last sentence of Paragraph(c)).

7. By striking Section 295.13.

8. By amending the first sentence of Section 295.15(a) to read: "The total charter price and other terms of service rendered pursuant to authority granted under this Part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective

(12362, 12363)

charter flight, and the contract must be for the entire capacity of one or more aircraft."

9. By striking at the end of Section 295.15(c) the words "unless special or unusual circumstances are shown in the application for exemption authority and the Board approves thereof."

10. By amending Section 295.16 by striking the second sentence which begins with the words "Proof of commission . . .".

11. By striking Section 295.17.

12363

12. By adding a new Section 295.26 to read as follows:

§295.26 *Statement of Supporting Information.* Travel agents shall execute, and furnish to air carriers Section A of Part II of the Statement of Supporting Information.

13. By striking the last sentence of Section 295.33(a).

14. By amending Section 295.34(b) by striking the words "whichever is authorized".

15. By amending Section 295.35 as follows:

a. Amend Paragraph (a) by striking the words "whichever is authorized".

b. Amend Paragraph (3) of Subsection (b) to read: "(3) *Bona fide* members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participation in the charter flight was permitted by the Board pursuant

to request for waiver. Specify on the passenger manifest . . ." (remainder unchanged).

c. Amend Subsection (d) by striking the language following "(1)" and inserting in lieu thereof: "was a *bona fide* member of the chartering organization at the time the chartering organization first gave notice to its members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a *bona fide* member of an entity consisting of (a) students and employees of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, (3) is a person whose partici-

pation has been specifically permitted by the Civil Aeronautics Board, (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or (5) is a *bona fide* participant in a charter composed of participants in a formal academic study course abroad.

(signature) ."

16. By adding a new Section 295.36 to read:

§295.36 *Statement of Supporting Information.* Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information.

17. By striking Section 295.40.

18. By striking the words "set forth in the application" in Section 295.42.

(12364, 12365)

19. By striking the last sentence of Section 295.43.

20. By amending Section 295.60 by striking, at the beginning thereof, the words: "At any time prior to the filing of an application pursuant to this Part" and by adding to the second sentence thereof the words "in any subsequent proceeding in which the lawfulness of the respective charter may be in issue."

12365

21. By amending the form presently entitled "Application for Authority to Conduct Transatlantic Passenger Charter Flights" as follows:

a. Strike the present title "Application for Authority to Conduct Transatlantic Passenger Charter Flights" so that the form remains entitled: "Statement of Supporting Information".

b. Strike in the line following the designation "Part I" the word "applicant".

c. Strike Paragraph "d" of Question 5.

d. Strike footnote 1 and references to it throughout the form.

e. Strike from Question 13 the sentence at the end thereof, beginning with the words "If the answer is yes . . .".

f. Delete from Question 20 the sentence at the end thereof, beginning with the words "If the answer is no . . .".

g. Strike from the line "Verification of air carrier applicant" the word "applicant".

h. Strike from the clause "(Signature and title of authorized official of air carrier applicant)" the word "applicant".

12366

22. By amending the Form "Transatlantic Charter Post Flight Report" as follows:

a. Strike from the instructions the first sentence thereof, and insert in lieu thereof: "The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight."

b. Strike Question 3.

(12520)

12520

Order No. E-17190

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 18th day of July, 1961

Docket 11908, *et al.*

In the matter of the

TRANSATLANTIC CHARTER INVESTIGATION

SUPPLEMENTAL ORDER OF INVESTIGATION AND CONSOLIDATION

By Order E-16023, November 14, 1960, we instituted this investigation to determine whether the public convenience and necessity require the certification of one or more air carriers to conduct transatlantic passenger charters from or to points in the United States and, if so, under what terms and conditions. By that order, we also consolidated herein two pending applications for certificates of public convenience and necessity to perform passenger charter flights, namely those of Overseas National Airways, Inc. (ONA), in Docket 8056, and of United States Overseas Airlines, Inc. (USOA), in Docket 8951. More recently, we have consolidated seven other pending applications herein,

namely those of Saturn Airways, Inc. (Saturn), in Docket 11962, President Airlines, Inc. (President), in Docket 11931, Capitol Airways, Inc. (Capitol), in Docket 11982, Imperial Airlines, Inc. (Imperial), in Docket 11965, Airline Transport Carriers, Inc. d/b/a California-Hawaiian Airlines (California-Hawaiian), in Docket 11999, The Flying Tiger Line Inc. (Flying Tiger), in Docket 6668, and Seaboard World Airlines, Inc. (formerly Seaboard & Western Airlines, Inc.) (Seaboard), in Docket 11971.[1]

It was our intention to consolidate such applications only insofar as they sought authority to conduct charter service within the appropriate geographical scope of this case, which we conclude should be defined by the traditional boundaries of transatlantic route proceedings. Since certain of the applications previously or hereby consolidated

12521

entail requests for authority beyond those boundaries, it appears desirable at this time to specifically limit this proceeding to a consideration of applications for certificated transatlantic passenger charter authority within the following area: between points within the 48 contiguous states, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as (and including) India, on the other hand. Consideration of applications for authority beyond that area would unduly expand this already broad proceeding and would, in our

[1] The pertinent orders were: Saturn—Order E-16967, June 20, 1961; President—Order E-17048, June 29, 1961; Capitol—Order E-17049, June 29, 1961; Imperial—Order E-17050, June 29, 1961; California-Hawaiian—Order E-17051, June 29, 1961; Flying Tiger—Order E-17133, July 10, 1961; and Seaboard—Order E-17134, July 10, 1961.

judgment, be premature. Therefore, we shall sever out of the previously consolidated applications of ONA, USOA, Saturn, Capitol, California-Hawaiian, and Seaboard, requests for authority beyond the geographical limits of this proceeding. In view of our desire to bring the Board's docket to a reasonably current basis and thus insure that important formal proceedings may be passed upon promptly, we shall dismiss the severed portions of the applications, without prejudice to the right of those carriers to file new applications for such further and specific authority as they may desire.

The Board also issued a Notice of Proposed Rule Making (EDR-21, Docket 11907, Part 295) contemporaneously with Order E-16023. That rule-making proceeding was concluded on April 20, 1961, by the issuance of a revised Part 295 (ER-326) which establishes the requirements governing applications for, and operations under, temporary (seasonal) blanket exemption authority for transatlantic passenger charter flights. One of the requirements of the amended Part 295 is that applicants for authority thereunder must be applicants in good standing for transatlantic charter authority in the instant proceeding (§295.5(a)).[2] To establish such eligibility to apply for the exemption authority, we shall consolidate all remaining pending applications for certificates of public convenience and necessity to perform transatlantic passenger charter flights. Consistent with our action herein with regard to the previously consolidated applications, we shall sever out of all such

[2] Our recent actions in consolidating the applications of Saturn, President, Capitol, Imperial, California-Hawaiian, Flying Tiger and Seaboard were grounded on this prerequisite to the award of temporary (seasonal) blanket exemption authority.

applications requests for authority beyond the geographical limits of this proceeding, and dismiss the severed portions without prejudice. In total, 31 applications will be totally or partially consolidated in this proceeding by the instant order and Orders E-16023, E-16967, E-17048, E-17049, E-17050, E-17051, E-17133, and E-17134.

The issues to be considered in the instant investigation are those which arise under section 401 of the Federal Aviation Act of 1958, as amended, namely: (a) whether the public convenience and necessity require the certification of one or more transatlantic passenger charter carriers and, if so, which carrier or carriers should be selected to perform such transportation; (b) whether the various applicants are fit, willing, and able properly to perform the proposed transportation and to conform to the provisions

of the Act and the rules, regulations, and requirements of the Board thereunder; and (c) what terms, conditions or limitations should be attached to any certificates which the Board might grant.

In placing in issue the terms, conditions and limitations which would attach to any authority ultimately granted herein, we contemplate a full consideration of the rules which should govern such operations. This includes, but is not limited to, further consideration of rules established by our recent amendment of Part 295 (ER-326, *supra*). As we stated in issuing that amended regulation, the hearing herein will be directed to the *long-range* needs and authorizations in the transatlantic passenger charter field (ER-326, *supra*, at p. 9). In determining rules to govern the broader and more permanent operations which may be

authorized herein, it is patent that the Board should have the benefit of a full evidentiary hearing. We, therefore, invite the applicants and all parties not only to offer any suggestions which they may have with regard to the suitability of the rules of Part 295 for a long-range program, but also to come forward with any new concepts which they may consider appropriate.

THEREFORE, IT IS ORDERED:

1. That the investigation in Docket 11908, instituted by Order E-16023, November 14, 1960, be and hereby is limited to the consideration of applications for certificates of public convenience and necessity to conduct transatlantic passenger charter services between points within the 48 contiguous states, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as (and including) India, on the other hand;

2. That the investigation in Docket 11908 shall entail consideration of the following issues:

(a) Whether the public convenience and necessity require the certification of one or more air carriers to perform transatlantic passenger charter flights as delineated in ordering paragraph No. 1 and, if so, which carrier or carriers should be selected to perform such transportation, and what terms, conditions or limitations should be attached to such certificates;

(b) Whether the various applicants for transatlantic passenger charter authority are fit, willing and able to perform such transportation properly, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board thereunder;

3. That the applications of Overseas National Airways, Inc., in Docket 8056, United States Overseas Airlines, Inc., in Docket 8951, Saturn Airways, Inc., in Docket 11962, Capitol Airways, Inc., in Docket 11982, Airline Transport Carriers, Inc. d/b/a California-Hawaiian Airlines, in

12523

Docket 11999, and Seaboard World Airlines, Inc. (formerly Seaboard and Western Airlines, Inc.), in Docket 11971, insofar as they request authority to conduct passenger charter services via other than transatlantic routings or between points not within the geographical limits of this proceeding as defined by ordering paragraph No. 1, above, be and they hereby are severed and dismissed without prejudice;

4. That Order E-16023, and Orders E-16967, June 20, 1961, E-17049, June 29, 1961, E-17051, June 29, 1961, and E-17134, July 10, 1961, insofar as they consolidated with this investigation the portions of the applications severed and dismissed by ordering paragraph No. 3 hereof, be and they hereby are rescinded;

5. That the applications of the following named carriers in the dockets noted, insofar as they entail requests for transatlantic passenger charter authority within the geographical limits established in ordering paragraph No. 1, above, be and they hereby are consolidated with the investigation in Docket 11908;

Applicant	Docket No.
Resort Airlines, Inc.	6964
Modern Air Transport, Inc.	11930
Quaker City Airways, Inc.	11943

(12523, 12524)

Applicant	Docket No.
Associated Air Transport, Inc.	11947
General Airways, Inc.[3]	11948
Trans-Alaskan Airlines, Inc.[4]	11951
Currey Air Transport Ltd.[4]	11954
Great Lakes Airlines, Inc.[4]	11955
National Airlines, Inc.	11958
Standard Airways, Inc.	11963
12524	
Southern Air Transport, Inc.	11966
Sourdough Air Transport	11968
World Airways, Inc.	11981
Paul Mantz Air Services	11984
Slick Airways, Inc.	11985
Aerovias Sud Americana, Inc.	11989
Trans International Airlines, Inc.	11997

[3] Inasmuch as we understand that certain assets of General Airways, including the right, title and interest in certificates or other documents of authority held by that carrier were sold in a bankruptcy proceeding held in the United States District Court for the District of Oregon (*In the Matter of General Airways, Inc., Bankrupt*, No. B-44813), and no application has been made for a transfer of the certificate pursuant to section 401(h) of the Act, we shall consider General Airways to be an applicant currently holding no operating authority.

[4] In consolidating the applications of Trans-Alaskan, Currey, and Great Lakes for hearing herein, we wish to make it clear that we thereby take no action inconsistent with our action in Orders E-16050, November 22, 1960, and E-16140, December 15, 1960. In those orders, we dismissed applications by these three carriers under the specific circumstances therein presented. However, as we then stated, our action did not constitute any permanent barrier to the filing of applications by those carriers (Order E-16050, at p. 7, fn. 6). The applicants will, of course, have the burden of establishing that they are now fit, willing and able within the meaning of the Act.

(12524)

Applicant	Docket No.
Central Air Transport, Inc.	11998
Coastal Air Lines	12106
World Wide Airlines, Inc.	12125
Riddle Airlines, Inc.	12152
Blatz Airlines, Inc.	12194

6. That the applications listed in ordering paragraph No. 5, above, insofar as they request authority to conduct passenger charter services via other than transatlantic routings or between points not within the geographical limits established in ordering paragraph No. 1, above, be and they hereby are severed and dismissed without prejudice;

7. That this proceeding be set down promptly for prehearing conference before an Examiner of the Board; and

8. That this proceeding shall be expedited as much as possible.

This Order will be published in the Federal Register.

By the Civil Aeronautics Board:

/s/ HAROLD R. SANDERSON
Harold R. Sanderson
Secretary

(SEAL)

(12703)

12703

Order No. E-17607

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 18th day of October, 1961

Docket 11908 et al.

In the matter of the

TRANSATLANTIC CHARTER INVESTIGATION

ORDER

This investigation was instituted by Order E-16023 adopted November 14, 1960, to determine whether the public convenience and necessity require the certification of one or more air carriers to conduct transatlantic passenger charters and, if so under what terms or conditions. By Order E-17190 adopted July 18, 1961, the issues were further defined and it was pointed out that in placing in issue the terms, conditions, and limitations which would attach to any authority ultimately granted, a full consideration of the rules which should govern the operation was contemplated. Thus, the applicants and all parties were invited not only to offer any suggestions which they might have with regard to the suitability of the rules of Part 295 for a long-range program but also to come forward with any

new concepts which they might consider appropriate. The order in question also consolidated a number of applications, including Docket 11958 of National Airlines, Inc., (National) and Docket 11985 of Slick Airways, Inc., (Slick).

Thereafter, pursuant to notice of the Chief Examiner, the proceeding was assigned for a prehearing conference and all parties were directed to submit motions, requests for evidence, etc., on or before August 8, 1961. In accordance with the notice, Oregon Aviation Corporation (Oregon) and Air Cargo Express, Inc., (Air Cargo) filed motions to consolidate the applications in Dockets 12878 and 12884, respectively, which applications seek to engage in transatlantic charter air transportation with respect to persons, property, and mail; and Capitol Airways, Inc., (Capitol) and World Airways, Inc., (World) filed motions to consolidate the applications in Docket 12497 and Amendment No. 2 to Docket 11981, respectively, which applications and amendment seek authority to engage in individually-ticketed round trip all-expense tours. An answer opposing the motion of Capitol was filed by Pan American.

12704

Following a prehearing conference, statements were filed with the approval of the Examiner directed to the proposals of Capitol and World and/or to the scope of any new charter proposals which the Board would entertain; and simultaneously National moved to dismiss its application in Docket 11958, and Slick advised that it would not prosecute its application in Docket 11985.

Upon consideration of the motions of Oregon and Air Cargo, we find that to the extent their applications seek

to engage in transatlantic charter air transportation of passengers and their belongings, such applications are within the issues and should be consolidated. Accordingly, we will consolidate the pertinent portion of these applications and dismiss the requests with reference to mail and property charters. We also find that the motions of National should be granted and that applications of National in Docket 11958 and Slick in Docket 11985 should be dismissed without prejudice.

Further, upon consideration of the motions of Capitol and World, the answer of Pan American, and various statements of position filed subsequent to the conference with respect to the scope of the charter service proposals which we would entertain, we wish to point out that it was not our intention in Order E-17190 to consider any proposals for individually-ticketed services such as contemplated in the application of Capitol in Docket 12497 and Amendment No. 2 to World's application in Docket 11981. These proposals would permit a carrier granted a certificate as a result of this proceeding to sell tickets to individuals who are unrelated to any group and would more or less resemble the certificated authority of Resort Airlines which we do not consider to be a charter service. Accordingly, we will deny the motions of Capitol and World to consolidate these proposals. On the other hand, we cannot agree that the proposals in this proceeding should be limited to the traditional concept of transatlantic charters or to charters as defined in Part 295. However, we would expect such proposals to fall within the broadly accepted meaning of charters, *viz*, the lease of an entire vehicle on a time, mileage, or trip basis. This would not preclude proposals which contemplate charters by professionals engaged in the

formation of groups for transportation (travel agents) currently prohibited under Part 295 of the Economic Regulations. In other words, the chartering of an aircraft by a travel agent and the offering by such agent to the general public of all-expense group tours would be within the scope of the issues in this case.

THEREFORE, IT IS ORDERED:

1. That the applications of Oregon Aviation Corporation and Air Cargo Express, Inc., in Dockets 12878 and 12884, respectively, insofar as they request authority to conduct transatlantic charters of passengers and their belongings, be and they are hereby consolidated; that to the extent such applications request authority to conduct charters of property and mail, they are hereby severed and dismissed;

12705

2. That the applications of National Airlines, Inc., in Docket 11958 and Slick Airways, Inc., in Docket 11985 be and they hereby are dismissed; and

3. That the motions of Capitol Airways, Inc., and World Airways, Inc., be and they hereby are denied.

By the Civil Aeronautics Board:

/s/ HAROLD R. SANDERSON
Harold R. Sanderson
Secretary

(SEAL)

(15082, 15083)

15082

Transcript in Transatlantic Charter Investigation

Witness, PHILLIP R. CAPELLUPO for Pan American World Airways.

* * * * *

Cross-Examination by Mr. Hobbs:

Q. On page 3 of your testimony, Mr. Capellupo, the paragraph marked D in the middle of the page, you speak of the fact that the Transatlantic market is an area of high cost operation. And earlier in your testimony on cross-examination you spoke of landing fees being so much in London and dwindling down to a much lesser amount in this country.

Do you happen to know how much higher the Transatlantic run is than domestic runs for comparable length? A. Well, to be very specific with you, let's take flying operations. The pilots' and co-pilots' salaries are entirely different for international and domestic.

Examiner Keith: And international is higher?

The Witness: I believe it is considerably higher.

Examiner Keith: Is that because of over water?

15083

The Witness: Since it is an international operation.

Examiner Keith: Let me ask you, because I was going to ask this also, would you go into the areas where the cost of Transatlantic operation is higher than, say, an operation from New York to Los

Angeles? I know yesterday or the day before you mentioned in comparison that the airport landing fees at domestic points was an area of higher costs.

The Witness: Another area of higher costs is fuel in the European countries.

Examiner Keith: Fuel is higher there?

The Witness: Yes, piston engine fuel.

By Mr. Hobbs:

Q. What I am trying to get at ultimately is, do you have any idea what percent higher it is to run Transatlantic operations? Is it twice as much? A. No, I don't know. But if you look at Pan American's Transatlantic operations and compare these costs with the costs included in the exhibit by the supplemental carriers in this case—

Examiner Keith: You have got fuel, pilots' salaries, custom fees and landing fees. How about stewardesses, do they get the same pay? Are all of your entire flight personnel higher than domestic?

The Witness: I believe they are, plus the fact that

I believe you have persons stationed in Europe who in addition to getting salary, have overseas salary allowances that you don't have in the United States. But that is a cost you have to take into consideration, plus the fact that on these long hauls you have stationing of crews which may create additional costs which are not considered by some of these carriers.

Mr. Ryan: Would you explain what you mean by stationing of crews?

(15084, 15085)

The Witness: Well, the stationing of crews indicates that you fly with a single crew to a point and land, and then that crew gets off and a new crew gets on. And that particular crew waits, and it may wait a week, if it is a supplemental carrier, before the flight comes back and picks up that crew.

In the meantime it is paying the living expenses for these pilots while they are out of the country. Now, in addition, I am sure that most of these carriers who have ALPA contracts will be eventually faced with this one-and-four problem, which means that for every six hours that a crew is stationed away from their home base doing nothing, they must be paid one hour of flight pay.

So that means that for every 24 hours that they lay over, you may think them one hours of flight pay.

These are some of the items that represent higher

15085

costs in the Transatlantic operations. When I say Transatlantic, it is overseas, the same thing happens in Transpacific.

Examiner Keith: Are there any balancing lower costs?

The Witness: There might be some, to the extent of hiring some local personnel, but it is pretty nominal, because where you pay less money to a particular employee, you are not getting maximum efficiency out of the employee.

• • • • •

15338

Transcript in Transatlantic Charter Investigation

Witness, KENNETH L. BRIGGS for Trans World Airlines.

* * * * *

Hearing Examiner Keith: How do those costs compare? Are your Trans-Continental and Trans-Atlantic costs higher and by how much?

The Witness: Oh, on an hourly basis, Mr. Examiner, approximately $100 an hour higher in International operations.

15339

Hearing Examiner Keith: $100 an hour higher? That is your over-all operations?

The Witness: Yes, sir. That is using Boeing 707-331 aircraft in both instances, the same airplane. Transcontinental we have been running in 1961, I should say, the hourly cost, the cost per block hour was $555. This is excluding depreciation. In International operation it was $650.

Hearing Examiner Keith: Five hundred and what?

The Witness: $555 domestic.

Hearing Examiner Keith: Domestic?

The Witness: $650 International.

Mr. Hobbs: Mr. Examiner?

Hearing Examiner Keith: Yes, Mr. Hobbs.

Mr. Hobbs: I was not a e to catch much of what he said. He was sort of addressing himself to you. The figure I was interested in was $100 an hour higher for International operations for jets, is that what you said?

The Witness: Yes, sir.

* * * * *

(16308)

16308

United States Overseas Airways Exhibit No. 106

The Great Majority of U. S. Passports Issued and Renewed are for Travel To Europe, the Middle East and Africa

The strong tourist attraction of the areas at issue in this proceeding (Europe, Middle East and Africa) is clearly indicated by the fact that of the passports issued and renewed during the period July through December, 1958 75.1% listed one of the foregoing areas as its first destination.

Passports issued and renewed by areas of first destination July through December, 1958

Area of First Destination	Number	
Europe	168,244	
Middle East	5,785	
Africa	3,279	
Total passports issued and renewed for travel to points within the area covered by Docket No. 11908 et al		177,308
North, Central & South America	28,976	
Far East	16,233	
Australia and Oceania	13,497	
Total passports issued		236,014

Percentage of total passports issued and renewed which listed Europe, Middle East and Africa as areas of first destination—75.1%

Source: United States Department of State, Passport Office

17575

Trans World Airlines Exhibit No. TWA 13

Comparison of Competition
in Transatlantic and U. S. Transcontinental Markets

	Trans-atlantic (A)	Trans-continental (B)
Annual Passengers (C)	1,600,000	1,312,000
Number of Airlines	15 (D)	3
Passengers Per Airline	107,000	437,000

(A) To and from U. S.

(B) Between Boston, New York, Philadelphia, Baltimore and Washington on the one hand, and Los Angeles and San Francisco on the other hand

(C) 12 months ended June 30, 1961

(D) IATA airlines

Sources: IATA Reports
Competition Among Air Carriers, CAB

(19438)

19438

RECOMMENDED DECISION OF EXAMINER JAMES S. KEITH

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

In the matter of an investigation by the Board to determine whether the public convenience and necessity require the certification of one or more air carriers to engage in transatlantic passenger charter service, and if so, under what conditions should the service be authorized.

Recommended Decision of Examiner James S. Keith

Served: SEP 21 1962

Upon:

Perry H. Taft, Attorney at Law, 1 Larch Drive, Atherton, Calif., for Airline Transport Carriers, d/b/a California-Hawaiian Airlines.

Theodore I. Seamon, 700 Woodward Bldg., Washington, D. C., for Capitol Airways, Inc.

Norman L. Meyers (Meyers & Batzell), 1201 Shoreham Bldg., Washington 5, D. C., for The Flying Tiger Line, Inc.

Exceptions, if any, to this Recommended Decision must be filed with the Docket Section of the Civil Aeronautics Board, Washington 25, D. C., and served upon all parties within 10 days of service shown above. Briefs may be filed and served on all parties within 20 days after the date fixed for filing exceptions.

Albert F. Beitel, 905 American Security Bldg., Washington 5, D. C., for Modern Air Transport, Inc.

Ramsay D. Potts, Jr. (Shaw, Pittman, Potts & Trowbridge), 910—17th Street, N. W., Washington 6, D. C., for Overseas National Airways, Inc.

Robert E. Fraley (Keatinge & Sterling), 3325 Wilshire Blvd., Room 914, Los Angeles, Calif., for Great Lakes Airlines, Inc., and Paramount Airlines, Inc.

Warren E. Miller, Suite 30[illegible], 810—18th Street, N. W., Washington 6, D. C., for Quaker City Airways, Inc., d/b/a Admiral Airways, Inc.

Raymond J. Rasenberger, 500 Wyatt Bldg., Washington 5, D. C., for Riddle Airlines, Inc.

Robert M. Lichtman, 1144 Pennsylvania Bldg., Washington 4, D. C., for Saturn Airways, Inc.

19439

Joel H. Fisher, 1001 Connecticut Ave., N. W., Washington, D. C., for Seaboard World Airlines, Inc.

G. Nathan Calkins (Galland, Kharasch, Calkins & Lippman), 1824 R Street, N. W., Washington 9, D. C., for U. S. Overseas Airlines, Inc.

Jerrold Scoutt, Jr., 412 Cafritz Bldg., Washington, D. C., for World Airways, Inc.

Jerry W. Ryan, 135 E. 42nd Street, New York 17, N. Y., for Pan American World Airways, Inc.

Edmund E. Harvey (Chadbourne, Parke, Whiteside & Wolff), 25 Broadway, New York, N. Y., for Trans World Airlines, Inc.

Rocco C. Siciliano (Wilkinson, Cragun & Barker), 1616 H Street, N. W., Washington 6, D. C., for the American Society of Travel Agents, Inc.

Howard G. Feldman, Bureau of Economic Regulation, Civil Aeronautics Board, Washington 25, D. C., for the Bureau.

(19440)

19440

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

Recommended Decision of Examiner James S. Keith

It is Recommended that the Board—

I. Amend Part 207 of the Economic Regulations so as to authorize the certificated all-cargo carriers to engage in transatlantic passenger charter service under terms, conditions, and limitations corresponding to those provided for in Part 295 of the Economic Regulations as revised and contained in Appendix B hereof;

II. Issue to Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc. (upon compliance with the insurance requirements of Part 295.14(b) of the Economic Regulations)* temporary certificates of public convenience and necessity (expiring September 30, 1963) authorizing supplemental air transportation of persons and their baggage between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east as (and including) India, on the other hand, subject to the requirements of Part 295 as revised and contained in Appendix B hereof;

---

* See Notice of Proposed Rulemaking dated September 4, 1962, EDR-43, for comparable provisions to Part 295.14(b).

III. Defer final decision with reference to the applications of Capitol Airways, Inc., Overseas National Airways, Inc., Saturn Airways, Inc., Modern Air Transport, Inc., U.S. Overseas Airlines, Inc., Quaker City Airways, Inc., d/b/a Admiral Airways, Inc., Airline Transport Carriers, Inc., d/b/a California-Hawaiian Airlines, and Paramount Airlines, Inc., until after the Board's decision on the collateral applications of these carriers under Section 401(d)(3) of the Federal Aviation Act, for authority to engage in supplemental air transportation;

IV. Revise Part 295 of the Economic Regulations in accordance with the draft contained in Appendix B hereof; and

19441

V. Deny the application of Great Lakes Airlines, Inc., Docket 11955, and dismiss the applications of The Flying Tiger Line, Inc., Docket 6668, Riddle Airlines, Inc., Docket 12152, and Seaboard World Airlines, Inc., Docket 11971.

Appearances:

Perry H. Taft, for Airline Transport Carriers, d/b/a California-Hawaiian Airlines.

Theodore I. Seamon, Joseph D. Sullivan and *Stephan L. Gelband,* for Capitol Airways, Inc.

Norman L. Meyers, and *Ivan V. Kerno,* for The Flying Tiger Line, Inc.

Albert F. Beitel and *John H. Pratt,* for Modern Air Transport, Inc.

Ramsay D. Potts, Jr. and *Stephen D. Potts,* for Overseas National Airways, Inc.

(19440)

19440

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

Recommended Decision of Examiner James S. Keith

It is Recommended that the Board—

I. Amend Part 207 of the Economic Regulations so as to authorize the certificated all-cargo carriers to engage in transatlantic passenger charter service under terms, conditions, and limitations corresponding to those provided for in Part 295 of the Economic Regulations as revised and contained in Appendix B hereof;

II. Issue to Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc. (upon compliance with the insurance requirements of Part 295.14(b) of the Economic Regulations)* temporary certificates of public convenience and necessity (expiring September 30, 1963) authorizing supplemental air transportation of persons and their baggage between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east as (and including) India, on the other hand, subject to the requirements of Part 295 as revised and contained in Appendix B hereof;

---

* See Notice of Proposed Rulemaking dated September 4, 1962, EDR-43, for comparable provisions to Part 295.14(b).

III. Defer final decision with reference to the applications of Capitol Airways, Inc., Overseas National Airways, Inc., Saturn Airways, Inc., Modern Air Transport, Inc., U.S. Overseas Airlines, Inc., Quaker City Airways, Inc., d/b/a Admiral Airways, Inc., Airline Transport Carriers, Inc., d/b/a California-Hawaiian Airlines, and Paramount Airlines, Inc., until after the Board's decision on the collateral applications of these carriers under Section 401(d)(3) of the Federal Aviation Act, for authority to engage in supplemental air transportation;

IV. Revise Part 295 of the Economic Regulations in accordance with the draft contained in Appendix B hereof; and

19441

V. Deny the application of Great Lakes Airlines, Inc., Docket 11955, and dismiss the applications of The Flying Tiger Line, Inc., Docket 6668, Riddle Airlines, Inc., Docket 12152, and Seaboard World Airlines, Inc., Docket 11971.

Appearances:

Perry H. Taft, for Airline Transport Carriers, d/b/a California-Hawaiian Airlines.

Theodore I. Seamon, Joseph D. Sullivan and *Stephan L. Gelband,* for Capitol Airways, Inc.

Norman L. Meyers, and *Ivan V. Kerno,* for The Flying Tiger Line, Inc.

Albert F. Beitel and *John H. Pratt,* for Modern Air Transport, Inc.

Ramsay D. Potts, Jr. and *Stephen D. Potts,* for Overseas National Airways, Inc.

(19441, 19444)

Robert E. Fraley, for Great Lakes Airlines, Inc., and Paramount Airlines, Inc.

Warren E. Miller, for Quaker City Airways, Inc., d/b/a Admiral Airways, Inc.

Raymond J. Rasenberger and *Mitchell Strickler,* for Riddle Airlines, Inc.

Robert M. Lichtman, and *Samuel K. Abrams,* for Saturn Airways, Inc.

Richard A. Fitzgerald and *Joel Fisher,* for Seaboard World Airlines, Inc.

G. Nathan Calkins, for U. S. Overseas Airlines, Inc.

Jerrold Scoutt, Jr., for World Airways, Inc.

Jerry W. Ryan, for Pan American World Airways, Inc.

Edmund E. Harvey, for Trans World Airlines, Inc.

Rocco C. Siciliano, for the American Society of Travel Agents, Inc.

Howard G. Feldman, for the Bureau of Economic Regulation.

• • • • •

19444

INTRODUCTION

This is an investigation instituted by the Board for the purpose of determining whether the public convenience and necessity require the certification of one or more air carriers (other than carriers certificated to provide unlimited passenger service over designated routes) to engage in transatlantic passenger charter service to and from points within the United States, and if so, under what conditions should the service be authorized. In issue are the applications of eight supplemental air carriers, three certificated

all-cargo air carriers, a carrier holding interim operating authority as a large irregular air carrier and a former large irregular air carrier whose operating authority has been revoked.[1]

After leave to intervene was granted to Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (Trans World), the American Automobile Association and the American Society of Travel Agents (ASTA), and copies of the applications transmitted to the President of the United States in accordance with Section 801 of the Federal Aviation Act of 1958, as amended, a public hearing was held and briefs were filed.

19445

THE ISSUES

The geographical scope of this case is limited to the traditional boundaries of transatlantic route proceedings. As defined in the Supplemental Order of Investigation and Consolidation,[2] it encompasses the 48 contiguous States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The basic substantive issues are those raised by Section 401 of the Act; they are defined by the order in question as—

(a) Whether the public convenience and necessity require the certification of one or more air carriers

[1] At the time of the public hearing 25 applications were in issue in this case. However, 12 applicants failed to prosecute their respective proposals and the Board subsequently dismissed them in Order E-18319, adopted May 9, 1962.

[2] Order E-17190, adopted July 18, 1961.

to perform transatlantic passenger charter flights and, if so, which carrier or carriers should be selected to perform such transportation and what terms, conditions, or limitations should be attached to such certification, and

(b) Whether the various applicants for transatlantic passenger charter authority are fit, willing and able to perform such transportation properly, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations and requirements of the Board thereunder.

With reference to any terms, conditions and limitations that might be attached to any certificate the Board has included the subsidiary question of the suitability of Part 295 of the Economic Regulations for a long-range charter program. The only limitation on any proposed changes in

Part 295 is that they must fall within the broadly accepted meaning of charters and not involve individually-ticketed services directly by the carriers.[3] Thus, proposals which contemplate charters by professionals engaged in the formation of groups for transportation (travel agents) currently prohibited under Part 295 are within the issues,[4] and proposals involving split-charters to so-called "affinity" and "spontaneous" groups are also acceptable.[5]

---

[3] Order E-17607, adopted October 18, 1961.

[4] *Ibid.*

[5] Order E-18121, adopted March 19, 1962.

THE APPLICANTS

Background. Applicants are one of three groups of carriers which provide the bulk of transatlantic passenger charter service. They came into existence as a class when the Board announced a new policy in 1955 called the Transatlantic Charter Policy which established them as an additional category of carriers to provide transatlantic charter services. Under that new policy the supplemental and all-cargo carriers became eligible to provide transatlantic passenger charters upon obtaining individual exemptions from Section 401 of the Act to provide each charter.[6]

19447

Since the establishment of its Transatlantic Charter Policy in 1955 the Board has redefined and amplified the standards for charter eligibility. Generally, these standards have followed the rules of the IATA carriers as approved by the Board. In 1959 these standards, with minor modifications, became Part 295 of the Board's Economic Regulations. Following its decision in the *Foreign Off-Route Charter Investigation,*[7] in which foreign air carriers were for the first time authorized to perform off-route charters in air transportation, the Board promulgated Part 212 of the Economic Regulations which established charter standards for the foreign flag carriers similar to those applicable to the Part 295 carriers. The next year after the IATA carriers improved their charter standards

[6] The U. S. flag multiple service route carriers are not required to obtain individual exemptions since they possess statutory authority to provide off-route charters subject to Board regulations. They have been regulated under Part 207 of the Economic Regulations since 1951.

[7] 27 CAB 196, (1958).

at the Board's request, Parts 295 and 212 were modified to conform in substantial respects with the IATA requirements.

In 1961 Part 295 was again revised, this time to provide for individual seasonal exemptions in place of individual exemptions for each charter. This regulation is currently in effect, providing for 180-day individual exemptions (terminating not later than September 30 of any year) to those supplemental and all-cargo carriers which are applicants in good standing in the instant proceeding.

It appears that this revision of Part 295 was occasioned by the Board's decision to institute this proceeding and its conclusion that (1) retention of the power to disapprove individual charter flights was no longer administratively

necessary and (2) the economic and administrative burden in obtaining approval for each flight so handicapped the small carriers as to effect their ability to operate the services profitably.

As may be noted from the historical sketch of each applicant as hereinafter follows, very few have consistently availed themselves of the authority conferred by the charter regulations. For the 1962 tourist season 10 of them filed applications for seasonal exemptions but only five were approved.[8]

---

[8] The applications of ONA, Riddle, Saturn, Flying Tiger and Capitol were approved while those of Seaboard, Admiral, Cal-Hawaiian, USOA, and Paramount were denied. The latter, except for Seaboard were denied because of lack of definite plans for charters. Since Seaboard's contracts for charters had been reassigned to another carrier the Board found that it had no substantial program. Order E-18390 adopted May 20, 1962.

Capitol Airways, Inc., (Capitol) has been engaged in air transportation service since 1946. It is one of the larger supplemental air carriers, holding a five-year certificate[9] and operating a fleet of 10 owned and 3 leased Constellations and 15 owned and 2 leased C-46's.

In the early years of its existence Capitol operated a flight and ground training school along with its charter service with light aircraft. In addition, it maintained sales, servicing and maintenance facilities. In 1951 it branched out into the domestic military charter field and this busi-

19449

ness has been a segment of Capitol's overall operations since that time. It became a "Logair" contractor in 1954 and while its participation in this business has varied from year to year some idea of its important to Capitol can be gleaned from the fact that Capitol presently utilizes 13 C-46's in this operation. Capitol has also steadily increased its participation in international military contract service. Currently, it provides overseas service for MATS with its Constellation fleet and it is also a CRAF contractor.

Although Capitol operated a few transatlantic charters in 1958, it did not seriously enter this field until 1959. Its

---

[9] This certificate and those of the other supplemental carrier applicants hereinafter referred to, as well as the interim operating authority of Airline Transport Carriers, Inc., were cancelled by Public Law 87-528 enacted July 10, 1962, 76 Stat. 143, 30 days after enactment. However, authority to continue operations on an interim basis pending future certification under Section 401(d)(3) of the Federal Aviation Act (which section was established by the new legislation) was provided for upon compliance with certain prescribed procedure.

(19449, 19450)

charter record from that time through 1961 is shown in the table below:

Year	Transatlantic Charter Flights	Transatlantic Roundtrip Charters	Passengers Carried
1959	71	33	6,428
1960	101	45	8,085
1961	87	31	8,375

To support its overseas operations Capitol maintains a base at the Greater Wilmington Airport which is leased for a period of 9 years terminating in 1968. This base includes hangar facilities for maintenance of its Constellation aircraft and a substantial inventory of rotatable and spare parts. Maintenance personnel (which consists of, among others, mechanics and experienced supervisors) number in excess of one-hundred. This base also includes a flight and ground training school for pilots, flight engineers, navigators, engineers, and stewardesses.

Capitol's sales department is composed of seven persons, two of whom are stationed at Nashville, two in the New York sales office, two at the Chicago sales office and a European manager stationed in Paris. In addition, its

19450

president and two other high-ranking officers are engaged in sales activities. However, promotion of its transatlantic charters has been confined to contact efforts with agents and organizations through personal visits and approaches by mail (including charter-brochure mail).

Overseas National Airways, Inc. (ONA), like Capitol, is one of the larger supplemental air carriers; it holds a five-year certificate.[10] ONA has been engaged in air trans-

[10] See footnote 9 *ante*.

portation service since 1947, during which time it has focused its efforts primarily on the development of military business. Only for a brief period has its operations been weighted in favor of civilian commercial services. This was in 1957 and 1958. In 1959 it again concentrated its activities in the direction of military business and the bulk of its service has been in this area since that time. For example, of a total of 405 million revenue passenger miles flown in 1959, approximately 333 million were operated in international military transport service. Correspondingly, of 1.121 billion revenue passenger miles operated in 1960, nearly 1.100 million were flown for the military services.

Despite its concentration in the military area ONA was the largest Part 295 operator in 1958 and 1959. In those years it flew 250 and 140 charter flights, respectively. However, because of low fares and excess equipment available from foreign carriers in 1960 ONA decided to curtail its charter operations. Hence, it operated only 10 flights in 1960 and only three in 1961. Because of the capacity which

19451

others would offer in 1962 and the impending group fares ONA decided against entering the market on any large scale in that year.

ONA's operations are conducted with leased equipment; it does not own any aircraft. At the time of hearing it leased 10 DC-7's from the General Aircraft and Leasing Division of General Dynamics Corp., (GALCO). The terms of the lease call for its expiration in June 1962 but ONA states that it will enter into negotiations to extend the lease. In addition, it has taken delivery on two other such

aircraft under leases with Douglas Aircraft and GALCO, respectively.

ONA also has a lease arrangement with Flying Tiger for the use of two Canadair CL-44 aircraft. This lease is for one year extending from the date of delivery of the aircraft. So far these aircraft have not been delivered to the applicant, and it appears that the matter is in dispute between the applicant and Flying Tiger.

ONA's principal operating base is at Oakland National Airport, Oakland, California, and its organization at that point consists of a large compliment of flight personnel and a number of other employees. In New York ONA employs a small force consisting of station and passenger service personnel. During 1949 when it was engaged in transatlantic charter service, this force was augmented by 48 additional employees. Besides New York, a small force, including the president and his staff, have offices in Washington where financial and corporate records are maintained.

19452

Saturn Airways, Inc., (Saturn) holds a two-year certificate to engage in air transportation as a supplemental air carrier.[11] It was incorporated under the laws of the State of Florida in 1948, and has been engaged in air transportation services since that time. It was originally known as All-American Airways, but in November 1960 it changed that designation to its present name.

For a short period in 1948 Saturn engaged in infrequent individually-ticketed operations between New York and Puerto Rico. When C-46 aircraft were acquired by the company, laborers were transported under contract from

[11] See footnote 9 *ante*.

Puerto Rico to points in the United States. From 1951 to 1959 the company's aircraft were operated principally under contract with military establishments. During this period approximately 95 percent of Saturn's revenue was derived from CAM business.

In 1960 Saturn acquired two DC-6B aircraft and entered the domestic charter business. For the fiscal year ended June 30, 1961, its domestic charter business consisted of 9 percent of the company's total revenue for that period.

In 1961 it established sales offices in New York and London and entered the transatlantic charter business. In 1961 it operated 17 transatlantic charter flights and during the 8 months period ended February 28, 1962, Saturn's transatlantic charter program accounted for 20 percent of its total revenue.

19453

Saturn's present fleet consists of two DC-6B aircraft and three C-46's. The DC-6B's are owned by the company and also two of the C-46 aircraft are owned.

Saturn uses between 25 and 37 employees in its organization. The number varies according to the season of the year and it includes, among other employees, a sales representative in New York, a sales manager and secretary in London, England, 8 pilots, 4 flight engineers and one navigator. Saturn's aircraft are maintained under a contract with the All-American Maintenance, Inc., a repair station in San Antonio, Texas.

World Airways, Inc., (World) holds a five-year certificate as a supplemental air carrier.[12] It was incorporated in 1948 and has engaged in various types of operations since that time including individually-ticketed common carriage

[12] See footnote 9 *ante*.

services and service for the military; the latter, embracing principally MATS, CAMS and Logairs, has been the mainstay of World's operations.

World has not engaged in transatlantic charters allegedly because of equipment limitations, low fares and excessive competition. It has performed some transatlantic passenger flights between Newark, N.J., and Germany under contract with MATS. These flights were operated on a scheduled basis.

World's main base of operations is located at the Oakland Metropolitan Airport where it maintains its executive, accounting, operations, and dispatch and training offices. Its maintenance facilities are located at Oakland. In addition,

19454

the company has an operations office in Honolulu and a sales office in Los Angeles.

At the time of the hearing World's payroll consisted of 275 to 280 employees, most of whom are flight personnel. Its executive, administrative, and sales offices consist of 10 employees.

The company presently operates a fleet of eight Douglas DC-6a/b's and five Lockheed 1049-Super Constellations. It owns five of the DC-6's, and on June 7, 1962, it executed a contract with the Booth Leasing Corp., San Francisco, Calif., calling for the lease (with option to purchase) of two 707-320C turbo-fan jet aircraft, five spare engines and spare parts. The estimated amount of the contract is $16 million with World being required to deposit 20 percent or $3,200,000 by September 28, 1962. According to the testimony of World's Director of Finance these aircraft will be in convertible passenger cargo configuration and will be capable of carrying 189 passengers.

(19454, 19455)

Modern Air Transport, Inc., (Modern) is a small supplemental air carrier holding a two-year certificate.[13] It was incorporated under the laws of the State of New York in 1946 and began services on an irregular basis in 1947 with headquarters at Miami. In 1950 Modern transferred its organization from Miami to Newark, and in April 1962 it moved to Mercer County Airport at Trenton, N. J.

19455

Prior to 1952 Modern's operations consisted of individually-ticketed passenger services and charters. The former were concentrated in the New York-Miami and New York-San Juan markets and were held to be in violation of the Civil Aeronautics Act. After a change in ownership and management in 1952 Modern discontinued the violations and focused its activities on CAM movements. Its principal business was in this area until 1960. This is illustrated by Modern's record for the period 1957 thru 1960. In 1957 it operated 17.283 million revenue passenger miles in CAM operations and only 958,000 miles in domestic charters and common carriage. In 1958 it increased its participation in domestic charters and common carriage, operating approximately three million revenue passenger miles in these fields as against 15.892 million revenue passenger miles in CAM's. In 1959 Modern's common carriage and domestic charter services accounted for over four million passenger miles while CAM movements produced 12.230 million miles. In 1960 Modern's CAM program declined to less than seven million revenue passenger miles. Common carriage service, on the other hand, developed nearly 14 million revenue passenger miles while domestic charters produced nearly two million.

[13] See footnote 9 *ante*.

(19455, 19456)

In 1961 Modern operated four C-46's. However, it disposed of three of these and acquired five Constellations, two of which were made operational and the remaining three dismantled for spare parts. Modern's fleet of aircraft as of December 31, 1961, consisted of one leased C-46 and two owned L-1049 Constellations. Its organization consists of 33 employees, four of whom are in the general and administrative department, six in operations and maintenance and 23 in flight personnel. Its general and adminis-

19456

trative personnel also act as Modern's sales organization, and procures its domestic charter business.

U. S. Overseas Airlines, Inc., (USOA) is one of the larger supplemental air carriers holding a two-year certificate.[14] It was incorporated in 1950 and commenced operations in 1951 under a letter of registration which was originally issued in 1947 to Ralph W. Cox, d/b/a Ocean Air Tradeways. During its existence USOA has engaged in both commercial and military operations and beginning in 1957 it participated in all phases of domestic and overseas air transportation open to supplemental air carriers. Domestically it has operated CAM services, cargo services for the Navy between the major naval bases in the U. S., planeload commercial charters for a wide variety of groups, and regular limited individually-ticketed services between major points in the United States.

Its international and overseas services during the period 1957-61 included transatlantic and Pacific charters, MATS augmentation airlift in the Pacific, and limited aircoach services between California and Hawaii. These operations for the period from January 1957 thru September 1961

[14] See footnote 9 *ante*.

accounted for 116,000 passengers and 316,791 million revenue passenger miles. Included were nine one-way transatlantic charters in 1957, eighteen in 1958, two in 1959, ten in 1960, and six in 1961.

19457

USOA's 1960 common carriage services, which consisted of individually-ticketed service and commercial and private charters, amounted to 41 percent of its business. The balance of its operations were in CAM movements, Quicktrans operations, and MATS services. In 1961 the division was 42 percent common carriage and 58 percent military. As of March 10, 1962, USOA's MATS operations were suspended by the military for unsatisfactory performance and contradictory financial information.

In recent years USOA has maintained a force of nearly 300 employees. In the first half of 1961 it had as many as 577 employees. However, it was suggested that a large number of these employees were specialists in the Navy's Quicktrans program and when Slick was selected to operate this program in 1962 these specialists went over to Slick.

USOA's executive, sales, and accounting offices and its principal operations and maintenance base are located at Cape May-Wildwood Airport, Wildwood, N. J. The employees at this base account for a large part of USOA's organization which also includes a tour sales counter at LaGuardia Airport. USOA maintains a ticket office in Detroit and counter space at Willow-Run Airport.

Oakland is the location of USOA's west coast maintenance base. Counter facilities are also maintained at the airport. USOA also has sales offices and ticket counters in Burbank and Honolulu.

At the time of hearing USOA owned eight C-54 aircraft and six DC-6's. It leased two C-54's.

(19458, 19459)

19458

Quaker City Airways, Inc., d/b/a Admiral Airways, Inc., (Admiral) holds a 2-year certificate as a supplemental air carrier.[15] It was organized in 1946 under the laws of the State of Pennsylvania and has engaged in air transportation on an intermittent basis since that time. For a period of about one year between 1952 and 1953 Admiral did not engage in air transportation services and its operations were suspended for a brief period in 1956. In 1957 and 1958 a limited number of flights, both in individually-ticketed and for the military, were performed with C-46 aircraft; and a limited number of cargo flights were flown in the first part of 1960. However, no services were operated in 1959, or in the latter part of 1960 or early 1961.

The present management took over the company in June 1961, immediately leased two L-749 Constellations from California Airmotive Corp., and began individually-ticketed services. These services were expanded, and in December 1961 Admiral's new management leased two DC-6's from Nevada Aero Trades Company. On February 14, 1962, Admiral leased an additional DC-6 and in that month it performed a substantial number of CAM charters in addition to its individually-ticketed services. In April Admiral added a third Constellation to its fleet of leased aircraft bringing the total number up to three DC-6's and three L-749's.

According to the president of the company the DC-6's have been allocated to the CRAF program and Admiral is presently awaiting security clearance preparatory to executing standby-and-call contracts with MATS. As of

19459

December 31, 1961, Admiral's organization consisted of 68 employees, 60 of whom were in flight personnel.

---

[15] See footnote 9 *ante.*

Airline Transport Carriers, Inc., d/b/a California-Hawaiian Airlines (Cal-Hawaiian) is presently operating as a supplemental air carrier under interim operating authority.[16] Except for two brief interruptions in its service during 1951-52 (when it suspended operations pending the disposition by the Board of a Section 408 application for control of the applicant and California-Central Airlines) and in 1955 (when these companies were adjudicated bankrupt) Cal-Hawaiian has engaged continuously in air transportation since 1946. During this time it has used DC-3, DC-4, Martin 202 and recently Lockheed Constellation aircraft.

Cal-Hawaiian's operations in 1957 were comparatively light, yielding only a little over $100,000 in revenue. In 1958, with contracts and charters accounting for $1,300,000, Cal-Hawaiian experienced one of its best years in operations. In 1959 it operated two transatlantic charter flights which increased to 35 in 1960 and declined to 13 in 1961. These charters were in addition to individually-ticketed and other charter services.

During most of 1961 Cal-Hawaiian employed around 60 employees. However, at the time of hearing its personnel numbered around 45. Its aircraft fleet consisted of one leased L-1049 Constellation with a seating capacity for 104 passengers. Two other similar model Constellations which had been purchased previously under a conditional sales

contract with TWA were returned because of failure to meet payments. The secretary-treasurer of Cal-Hawaiian testified that the market price of these Constellations declined to such a point that it was more favorable for Cal-

[16] See footnote 9 *ante*.

Hawaiian to return the aircraft to TWA and to negotiate with TWA for a cash buy-out at a substantial reduction in price.

Paramount Airlines, Inc. (Paramount) is an indirect successor to Paul Mantz Air Services which prior to October 1960 was an individual proprietorship owned by A. Paul Mantz. At that time the Board approved the transfer of the proprietorship to Paul Mantz Air Services, Inc., a corporation which had been organized in 1956 to engage in fire-fighting flight operations, air-to-ground photographic mapping enterprizes, and the production of films for the movie industry. On October 18, 1961, the certificate of incorporation was amended so as to change the name to that of the present applicant.

Paramount has an authorized capitalization of 75,000 shares of common stock at a par value of $1 per share. There is currently issued and outstanding 25,000 shares which are owned by Theo. O. Bodwell, president and director of the company and a former pilot for Great Lakes Airlines, Inc. Bodwell procured the stock and debentures in the amount of $60,000 from A. Paul Mantz on February 11, 1961. The price paid for the stock and debentures amounted to $50,000. This sum was borrowed from Pierce O'Carroll a longtime friend of Bodwell's. According to the testimony, the loan has been repaid by Bodwell with salary proceeds and funds obtained by cashing some of the debentures.

19461

Paramount commenced domestic flight operations on an individually-ticketed basis on or about March 23, 1961, utilizing an L-1049 Constellation aircraft. After leasing two L-749 Constellations during May and June of 1961, Paramount cancelled the lease of the L-1049 aircraft. It operated

thereafter with the two L-749's, using one in CAM operations.

In February and March 1962, Paramount leased two DC-7C aircraft and plans to acquire an additional DC-7CF cargo convertible type aircraft.

Great Lakes Airlines, Inc. (Great Lakes) was organized in 1940 succeeding a partnership by the same name which began operations in 1945. It continuously engaged in air transportation services from 1945 to December 1961 when its operations terminated as a result of governmental action.

Great Lakes is owned by Captain I. E. Hermann and Mrs. I. M. Hermann who also own Great Lakes Airlines Maintenance Corp. which has performed major maintenance aircraft work for Great Lakes and other supplemental air carriers. The Hermann's also operate, as a partnership, Nevada Aero Trades Company which owns three DC-6 aircraft now under lease to Admiral Airways. They also own all of the stock in California Airmotive Corporation which, in turn, owns five Lockheed L-749 Constellations. Two of these aircraft are leased to Paramount and the other three to Admiral Airways.

While Great Lakes is not actively engaged in air transportation at this time and has only a skeleton organization which allegedly is winding up the affairs of the company, the secretary-treasurer testified that, since California Air-

motive Corporation and Nevada Aero Trades Company are solely owned by the Hermanns, there would be no problem in reorganizing the Hermann enterprizes so as to make Great Lakes immediately operational with DC-6 and Constellation aircraft.

(19462, 19463)

Riddle Airlines, Inc. (Riddle) is a certificated all-cargo air carrier which holds authority to engage in both domestic and overseas air transportation. Its certificate for route 120 authorizes property and mail (nonsubsidy) services between the northeast United States and the Great Lakes, on the one hand, and Florida on the other; and its certificate for route 109 covers similar authority for services between New York and San Juan via Miami.

Although Riddle has engaged in air transportation for over ten years its first experience as a passenger operator came in the summer of 1960 when it converted one of its three DC-4 aircraft to passenger configuration and flew 18 one-way transatlantic charters for nearly 5 million revenue passenger miles. In the late summer of 1960 Riddle began altering its DC-7F cargo aircraft so as to make each aircraft a convertible vehicle capable of carrying either cargo or passengers or both. These aircraft were used in its transatlantic charter program in 1961 which covered 27 one-way flights and 11.729 million revenue passenger miles. At the time of hearing Riddle's 1962 transatlantic charter program embraced signed contracts for 226 one-way charters. Approximately 180 of these charter trips will be European originated.

19463

Riddle's main base of operations is located at Miami, Florida. Its transatlantic sales force is maintained in Washington, D. C., where a staff of five sales and administrative personnel are located. Riddle also has major sales offices in New York, Los Angeles, London, and Frankfurt, and maintains cargo-passenger sales offices in several other major cities in the United States.

Riddle's total personnel at the time of hearing numbered between 800 and 900 employees. This was a decline of

several hundred employees due to the temporary suspension of Riddle's common carriage operations at Chicago, Cleveland, Boston, Indianapolis, Tampa/St. Petersburg, Atlanta, and Philadelphia.[17] Normally, Riddle has in the neighborhood of 1100 or 1200 employees. Riddle's aircraft fleet consists of ten DC-7F aircraft with a seating capacity for 99 to 114 passengers and it also has seven Argosy cargo aircraft which it uses in its military Logair operations plus 30 C-46's and one DC-4.

The Flying Tiger Line, Inc. (Flying Tiger) is the country's leading domestic all-cargo carrier. It holds a certificate for Route 100 which extends from the major cities on the east coast through the midwest to the principal points on the west coast. It has engaged in air transportation since 1948 during which time it has provided a highly diversified operation. It has engaged in substantial common carriage freight services and has performed extensive passenger and cargo operations for the military as well as commercial passenger and cargo charters.

19464

It engaged in transatlantic charters before the Board's Transatlantic Charter Policy. However, it was not until 1957 that it entered the transatlantic charter market on a large scale. Between 1957 and 1961 it operated a total of 433 one-way transatlantic charters which was the largest number of charters performed by any Part 295 carrier during that period. Flying Tiger led the field in 1957 and 1961 and was second to ONA in 1958. In 1959 and 1960

[17] By Order E-18184, adopted April 5, 1962, the Board authorized Riddle to suspend services at these points until December 31, 1962.

Flying Tiger decided not to aggressively pursue transatlantic charters because of the rate situation and competition from foreign carriers. In those two years it operated only 43 one-way charters.

In terms of personnel Flying Tiger is the largest of the Part 295 carriers. It has nearly 1200 employees. Flying Tiger maintains a year-round full-time sales office in New York City and it has a year-round sales representative in London and Frankfurt. At the time of the hearing Flying Tiger's aircraft fleet consisted of 12 1049H Super Constellations, 10 Canadair CL-44 turboprop aircraft and one C-46. The Constellations will be sold as soon as Flying Tiger has "a reasonable offer."

Seaboard World Airlines, Inc. (Seaboard) is a certificated all-cargo carrier holding authority to engage in foreign air transportation over Route 119 which extends from New York to points in the British Isles and Western Europe. It has held this authority since 1955. However, Seaboard has been operating transatlantic air services since August 1947 providing both cargo and passenger operations. It began scheduled commercial all-cargo services over

Route 119 in April 1956 and has continuously provided this service since that time. In addition, it has rendered substantial passenger and cargo services for the military as well as limited civilian passenger charters to groups and to several foreign flag carriers. Among the civilian passenger charters performed directly for groups were 87 one-way transatlantic charters during the period 1957 through 1961.

Seaboard's main operating base is at New York where it employs 829 flight and ground personnel. In Europe Seaboard maintains offices in 17 cities and these offices are staffed with approximately 250 employees. Seaboard's total organization consists of approximately 1100 employees. Sales offices are located in Los Angeles, San Francisco, Atlanta, Boston, Chicago, New York, Cleveland, and Dallas; and in Europe—Austria, France, Germany, Ireland, Switzerland, and the United Kingdom.

Seaboard has an aircraft fleet of five Canadair CL-44's, and one C-46. These aircraft are equipped for conversion to passenger configuration.

Proposals (Geographical Scope and Plan of Operations). In response to a request of the Bureau of Economic Regulation each of the applicants submitted a proposed form of certificate, which, among other things, delineates the geographical area within which the transatlantic charter service would be authorized to operate. These certificates show that eleven of the applicants seek the broadest possible geographical coverage within the issues of the case, with nine of them proposing authority in precisely the same

language as that used by the Board in defining the geographical scope,[18] viz,

> Between points within the 48 contingent States of the United States, on the one hand, and points between Greenland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

[18] Order E-17190, *supra*.

(19466, 19467)

Flying Tiger and California-Hawaiian advocate a more detailed description of the countries to be served. The former would specifically name the coterminal points in the United States and all of the foreign countries to be served. Only Admiral and Paramount seek less than the maximum area that could be authorized; they do not propose to serve some of the countries in Asia and Africa.

At the prehearing conference the Bureau requested the applicants to submit their proposals, particularly their traffic and financial forecasts, on the basis of three assumptions: (1) That only one carrier would be certificated, (2) that three carriers would be certificated, and (3) that six carriers would be authorized. Most applicants complied with the request, and most of them agreed that the Part 295 authorizations should not extend to all of the applicants. Several, however, were of the opinion that there should be no limitation on the number authorized. Seaboard took the position that a single carrier, viz, Seaboard, should be certificated. The consensus of opinion among those taking a position on the number of carriers that should be authorized is that more than three but no more than six should be certificated.

19467

Appendix A sets forth in some detail each applicant's plan of operation. It will be noted that initially most of them plan to use piston engine aircraft, either DC-6's, DC-7's, or L-1049 Constellations. Two of the all-cargo carriers, viz, Seaboard and Flying Tiger, propose to use the turbo-prop Canadair CL-44's in the event they do not use Constellations; and Riddle, if traffic conditions warrant, plans to acquire pure jets, DC-8's or 707's and integrate them with DC-7's. World has entered into a lease for the

707's to be delivered in mid-1963 and these will be worked into its proposed charters.

The requirements on the number of aircraft needed vary considerably under the assumption that a single carrier may be authorized. Capitol estimates that it would need only seven Constellations. Under the same conditions ONA would require 13 DC-7's, Saturn 15 DC-7's, and USOA 18 DC-6's. According to Riddle it would need four DC-7's and two jets. As one of three carriers authorized, the number of aircraft estimated to be required vary from three to six and as one of six carriers the range is from two to four.

Most of the applicants estimate operating profits in excess of $1 million on the assumption of being the sole carrier selected and from $325,000 to $2,170,000 as one of three carriers authorized. As one of six carriers the operating profit range would be reduced substantially.

19468

Proposals (Amendments to or modification of Part 295). As mentioned earlier applicants are a class of carriers whose transatlantic charter authority is regulated by Part 295 of the Economic Regulations. As presently written these regulations define a "charter flight" as transatlantic air transportation performed by a direct air carrier where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage, on a time, mileage, or trip basis: (a) by a person for his own use,[19] or (b) by a representative (or representatives acting jointly) of a group for the use of such group (pro-

[19] The definition states that this includes a direct air carrier or surface carrier when such aircraft is engaged solely for transportation of company personnel and commercial passenger traffic in cases of emergency.

vided no such representative is professionally engaged in the formation of groups for transportation or in the solicitation or sale of air transportation services.) This definition covers (a) pro rata charters where the cost is divided among the passengers transported, (b) single-entity charters where the cost is borne by the charterer and not by individual passengers, and (c) mixed charters where the cost may be borne partly by participants and partly by the charterer.

In procuring the pro rata or mixed charters, carriers may not engage, directly or indirectly, in any solicitation of individuals (either through personal contacts or otherwise) and they may not employ, either directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group

19469

to make the charter flight. Solicitation must be confined to the chartering organization and must be limited to bona fide members of such organization and their immediate families,[20] except for colleges and universities located in one local area, the chartering organization must not have a membership in excess of 20,000.

Travel agents may not be used in organizing or assembling charter groups; nor may travel agents sell air transportation to any individual members of a group or otherwise engage in the administration of a charter flight. They may, however, arrange land tours for the chartering group as a whole and, in certain circumstances, arrange land tours for individual members of a group. The service

[20] Immediate family is defined as the spouse, dependent children, and parents of such members living in the same household.

of the travel agent may also be utilized to prepare brochures or other literature describing all aspects of the charter trip, but distribution of the material to individual participants must be confined to the charterers.

As pointed out previously one of the considerations in this proceeding is the suitability of Part 295 for a long-range transatlantic program. The Board, in Order E-17190, specifically invited the applicants and all parties to address themselves to this problem and to advance, within the broadly accepted meaning of charter, any new concepts which they may consider appropriate. In response to this invitation applicants and ASTA have come forward with several proposals for revising the regulations, including an amendment which would authorize split charters. The

19470

purpose of this amendment is to give the Part 295 carriers a new type of authority which would parallel in major respects the authority of the IATA carriers under the IATA Group Fares which was recently approved by the Board.[21]

The group fares, which establish a 38 percent discount on round trip economy fares, are applicable to "affinity" and "spontaneous" groups of 25 or more persons who travel in economy class across the northatlantic on a round trip basis. "Affinity" groups, as defined by the group fares, are those whose members belong to the same association, organization, company, corporation, or other legal entity which have principal purposes, aims, and objectives other than travel. Generally speaking, they are the same as those

[21] These fares were provided for in IATA Resolution 088n (Agreement CAB 16205) approved by Order E-18224, dated April 16, 1962.

charter groups or organizations which meet the standards of eligibility for pro rata charters under Parts 295 and 212. The "spontaneous" group, on the other hand, has no counterpart under Parts 295 or 212. It is defined by the group fares as any group of persons which has neither been publicly solicited, (either directly or indirectly) by the carrier, the travel organizer, a member of the travel group, an agent, or representative of any of them.

19471

The applicants, other than USOA,[22] propose that their charter authority be extended to groups of 25 persons or more[23] and that spontaneous groups be declared eligible as well as the present affinity groups. They would define "affinity" and "spontaneous" groups substantially as those terms are used by the IATA carriers.[24]

Another important proposal of the applicants as well as ASTA is a modification of the present restrictions on travel agents so as to permit them to charter aircraft for the movement of groups on all-expense paid tours organized and publicly solicited by them. ASTA suggests that this modification be accomplished by creating a third-class of charters to be known as the package tour charter. This

[22] USOA proposes that there be no restriction on the charters other than that the charter consist of a planeload of passengers. Under USOA's proposal a travel agent could charter an aircraft for the movement of passengers generated by such travel agent regardless of whether the passengers were on an all-expense tour or whether they were traveling on an individual basis or in a single group or several groups.

[23] Great Lakes would set the minimum size group at 20 persons.

[24] Saturn's and Modern's definition would permit spontaneous groups to be gathered through solicitation of members of such groups which is not allowed under the IATA definition.

classification which ASTA would establish for an experimental period of three years would cover a pleasure tour from the United States to one or more of the transatlantic foreign countries and return, the price for which would include round trip transatlantic transportation and all other transportation during the tour, escort service at each stopover, hotels or other accommodations, meals and sightseeing trips. It would require stopovers in at least two

19472

different cities and a tour for at least 13 days. Tour members would be required to travel as a unit and would have to pay the agent cash in full at least 30 days before departure or in any event before actual commencement of the tour. Once a member begins the tour no refund would be allowed which would bring the cost below the minimum required price of the tour. The price for the entire tour package, according to ASTA, should not be less than the lowest prevailing IATA fares from the point of origin to the furthest tour point and return.

In addition to the all-expense tour proposal ASTA recommends the repeal of those provisions of Part 295 which prohibit travel agents from assisting in the organization or assembly of a charter group or soliciting individual members of a pro rata charter for special land tours and which prevent travel agents from being paid a commission where they are members of a charter organization.[25] Seaboard would permit travel agents to solicit, promote, and engage in the administration of charter flights for bona

[25] ASTA also recommended that a new section be added to the provisions of Part 295 so as to define the purpose of charter flights. However, it did not introduce evidence on this proposal or allude to it on brief.

fide charter groups, including the signing of agreements for the charterer or collecting or dispersing pro rata charters of participants.

Other minor proposals include (a) a suggestion by Capitol for a rate standard requiring each group on a split charter to bear its pro rata charter on the cost of the entire aircraft; (b) a recommendation by Riddle for a minimum

19473

rate regulation to protect the IATA carriers and the applicants from a further deterioration in the rate structure; (c) a proposal by ONA and others that any bona fide organization regardless of size, location and other qualifications, should be permitted to form one or more affinity groups. Riddle has a similar recommendation. It would permit bona fide groups, such as last year's British Bar Association, to charter aircraft irrespective of size, provided the trip is business or convention rather than pleasure or tourist; and (d) suggestions by Riddle (1) to make possible the carriage of U. S. and NATO personnel or charters where the travel is certified by appropriate military officials (2) to eliminate restrictions on seasonality, and (3) to increase commissions payable to agents to 7.5 percent.

Position. Applicants contend that the transatlantic charter market is a dynamically growing segment of the air transportation business and that it has a substantial future potential. They credit the Part 295 carriers with a significant role in the development of this market and claim that such carriers have acted as a spur to better service and lower fares by the IATA carriers. Hence, applicants maintain that their continued presence in this field is required

if the IATA carriers are to have competitive stimulus and the low fare service fully exploited.

Although they concede that the IATA group fares will have an adverse impact on the transatlantic charter market they take the position that such fares have not eliminated the need for charter service. They allege that the group fares are temporary and experimental and that

19474

there is no assurance that such fares will be extended beyond March 31, 1963, the present termination date. Since the group fares do not permit weekend travel they contend that many groups, such as industrial employees who begin their vacations on weekends, would not be able to take advantage of the group fares. In addition, applicants point out that the group fares do not apply to off-route points,[26] and that they will be substantially higher than charter rates. Hence, they will not attract European groups.

As to diversion, applicants contend that historically the transatlantic charter market has been non-diversionary since experience will show that the regular route carriers have turned down and are continuing to turn down substantial amounts of charter business for equipment or other reasons.

As previously pointed out, applicants contend that Part 295 should adopt a broad concept of charters including "split" charters and the chartering of aircraft by travel agents or tour operators for all-expense group tours organized and sold by such agents or operators. As to split

[26] The only two U. S. "on-route" origination points are New York and Boston.

charters they assert that the present prohibition unnecessarily discriminates in favor of the larger chartering organization to the detriment of the smaller organization which cannot generate sufficient participants from its membership to fill a modern-day aircraft. Authorization of split charters, according to the applicant, would thus expand the charter market by bringing charter service to smaller affinity groups. The same would also be true, they

19475

allege, with reference to all-expense group tours for which there is a great demand.

THE INTERVENORS

Pan American and TWA. These intervenors are competitors of the applicants for transatlantic passenger charter business. They are also the competitors of 17 other carriers which operate transatlantic passenger services under the flags of foreign countries. Each of them holds a certificate for a North Atlantic route which links the United States with Europe and points beyond. Together they serve all of the countries involved herein, and as part of their certificated authority they have the inherent right to engage in on-route charters and the statutory right to operate off-route charters, subject to regulations prescribed by the Board.

These intervenors strongly oppose the issuance of certificates for transatlantic charter authority. They take the position that there is no need for such authority as the transatlantic passenger market is already saturated with competition that offers a wide variety of service including economy, charter, and the newly instituted group fare.

They point out that the route is intensely seasonal with directional markets that are not complementary to each other. These considerations, it is inferred, per se warrant the denial of the proposals under consideration.

However, aside from these considerations, it is argued that the recent establishment of the group fare has obviated any necessity for certificated charter carriers. It is asserted that under such group fares every passenger that

is now eligible to move on a charter can be handled on a scheduled service that is not only superior but about as inexpensive. Despite the fact that the group fare is not available for weekend travel and may not offer single-plane service, Pan American and TWA do not consider these to be handicaps which will noticeably affect the group fare market.

Other reasons advanced by Pan American and TWA for denying the applications in this proceeding are: (a) the certification of charter carriers would have an adverse effect on the foreign relations of the United States because inherent in such certification is the matter of reciprocity which would flood the market with a second tier of carriers and destroy the enforceability of the charter regulations; (b) charter services as proposed are not economically feasible as demonstrated by the past history of the Part 295 operations; and (c) the certification of the charter carriers would adversely affect operations of Pan American and TWA since they would divert from the group fare passengers.

Pan American and TWA contend that there is no need for split charter authority or for all-expense group tour

authority. They note that split charter authority would permit applicants to transport the same groups that are entitled to use group fares, and they contend that applicants have not established a need for this additional authority in view of the group fares. As to all-expense group tours it is claimed that the proposed definition would permit travel agents to publicly solicit members of the general public for charters, thus exposing to diversion every passenger now moving on the scheduled services.

19477

ASTA is a trade association incorporated under the laws of New York with a membership of approximately 1,450 travel agents and tour operators representing over 2,000 travel agency locations in the United States and Canada. In addition, ASTA has approximately 500 nonresident active members located in Europe, Asia, and Africa. ASTA's interest in this proceeding, as may have been noted, concerns the future role of the travel agent under Part 295.

In support of its proposal to remove the restrictions on travel agents ASTA reasons that such restrictions have an insignificant tendency to confine pro-rata charters to bona fide club members or otherwise to reduce diversion. Therefore, the restrictions, it is claimed limit the legitimate business freedom of the agent and is arbitrary if not possibly unconstitutional.

As to the charter of aircraft for all-expense group tours, ASTA contends that the proposal would make transatlantic pleasure tours available to a large segment of the American and European public which cannot otherwise afford such tours, and that it would enable the small travel agents to organize less than planeload charters and to offer low cost travel to every individual irrespective of whether such

individual belongs to a charterworthy group. Because the proposal will develop an alleged new market, ASTA argues that it will not divert substantially from the scheduled carriers.

19478

THE BUREAU OF ECONOMIC REGULATION

The Bureau takes the position that three supplemental air carriers should be certificated to provide transatlantic charter service for a period of five years. This position,[27] the Bureau emphasizes, is predicated on the assumption that Congress will enact legislation which will empower the Board to continue as a class the supplemental air carriers.[28] In the absence of such legislation, the Bureau indicates that it would not make any such recommendation for the supplementals in view of the seasonal nature of the charter operations which without the support of year-round operations, the Bureau contends, could not be economically justified.

It is pointed out that the transatlantic charter market has grown significantly since 1955 primarily as a result of the substantial difference between the cost of air transportation on a pro rata charter basis and the cost as determined by the applicable fare on a scheduled basis. So long as this difference prevails the Bureau argues that

---

[27] The first five years would be a test period, according to the Bureau, at the conclusion of which these carriers which had not performed an average of at least 50 round trip charters for the previous three years would be subject to revocation.

[28] Public Law 87-528 described in footnote 9 authorizes the Board to certificate supplemental air carriers to engage in charter operations. Whether this meets the Bureau's assumptions can only be answered by them.

there will be a substantial demand for charter services. While the difference has been narrowed considerably by the group fare the Bureau does not feel that the latter has eliminated the demand for charters.[29]

19479

Although the Bureau recognizes that group fares should reach a larger segment of the public than planeload charters, it contends that the great mass of the public will still be deprived of an inexpensive means of travel unless a limited number of Part 295 carriers are certificated with additional authority to carry charter groups by travel agents where such groups are on an all-expense paid tour. The Bureau opposes any split-charter authority on the basis that such authority cannot be justified simply to offset the competitive advantages gained by scheduled carriers through the group fare. According to the Bureau, group fares should adequately meet the needs of small groups.

19480

THE TRANSATLANTIC CHARTER MARKET

Characteristics and Growth. The traffic that moved via the charter services in issue here is part of the over-all transatlantic passenger market which historically has experienced directional imbalance, sharp seasonal fluctuations and intense competition. Every year since 1950 a majority of the passengers in this market have been U. S. citizens. At times U. S. travelers have accounted for as much as 71 percent of the total movement but most recent

[29] Like the applicants, the Bureau notes that the group fare service is not available for weekend periods or to off-route points.

statistics indicate that U. S. citizens make up about 63 percent.

Direction-wise, travel is heavier westbound. In 1961 the average load factor of the IATA carriers was 52.2 percent on westbound flights and 48.8 percent on eastbound trips. The westbound movement appears to reach its peak in August, September, and October and drops to its lowest point in April, May, and June. The eastbound movement, on the other hand, is the heaviest during the five months period March thru July, reaching its peak in June and July.

The total transatlantic passenger business is shared by 19 scheduled air carriers, which are also authorized to perform charter services, and the Part 295 operators. Sixteen of the 19 scheduled carriers are IATA members and two of these are the intervenors, Pan American and TWA. In addition to these there are prospects that others will enter the market. There are outstanding bilateral agreements with 17 foreign nations which permit the establishment of additional services. Already three foreign airlines have announced plans to activate service.

19481

The unrelenting growth of foreign flag competition in recent years has been accompanied by a corresponding decline in Pan American's and TWA's share of the market. In 1955 and 1956 these U. S. carriers accounted for 61 percent of U. S.-Europe passengers and 88 percent of the U. S.-Asia traffic, all of which moved via the North Atlantic. In 1961 they handled only 41 percent of the U. S.-Europe market and 65 percent of the U. S.-Asia passengers.

The pro rata charter market, which constitutes the bulk of the charters in issue here, is extremely sensitive to low

(19481, 19482)

cost transportation and is affected with the same problems that beset the entire transatlantic passenger business. This market is dependent on the pro rata fare being substantially lower than the most inexpensive scheduled fare, and it is even more seasonal and directional. It is composed almost entirely of U. S. pleasure and vacation travel and thus experiences greater seasonality and directional imbalance than the overall transatlantic market. This charter business is most active during the six-month period April thru September, peaking in June, July, and August. In 1961 about 83 percent of the transatlantic charters (pro rata and single-entity charters exclusive of MATS) were pro rata charters flown during the period April thru September and a large percentage of these were operated in mid-summer.

Between 1957 and 1961 the total number of transatlantic charter passengers on pro rata and single-entity flights increased nearly 200 percent. The largest increase was experienced in the pro rata charters which, as noted in the

19482

table below, jumped from 38,733 passengers to 168,694 passengers, an increase of over 300 percent:

Year	Total Charter Passengers	April-September Pro Rata Passengers
1957	70,654	38,733
1958	92,057	50,447
1959	108,318	63,781
1960	164,255	129,552
1961	203,959	168,694

Future Potential: The applicants have varying opinions as to the size of the future transatlantic charter market.

Capitol estimates the 1963 potential at 224,000 passengers, whereas, Riddle forecasts the 1963 market at 575,000 passengers. Within this wide range are the 1963 predictions by Seaboard of 275,000 passengers, 330,000 by ONA, Saturn, World, and Modern, and 384,000 by Flying Tiger.[30] Each of these estimates has as its foundation the historical growth trend of the transatlantic market.

Under the conditions which fostered the development of the present transatlantic charter market, the 1963 pro rata and single-entity passenger potential should be substantially larger than the 1961 volume of 203,000 passengers. A simple projection of the historical trend, using a 20 percent annual growth rate which is somewhat less than the experienced annual average growth rate, would place the 1963 potential at approximately 290,000 passengers. However, such a potential would necessarily ignore the recent inauguration of the group fare program by the IATA carriers.

19483

It is generally accepted that the greatest single influence in the development of the transatlantic charter market has been the low individual pro rata cost of a charter flight. The substantial difference between this cost and the cost under the comparable economy fare has created the demand for group travel via charter air transportation. Since 1960 the New York-London round trip economy fare on a jet flight has been $486 and on a piston-engine flight $450.

[30] Flying Tiger's traffic witness estimated that the market could total 400,000 passengers if split-charters and all-expense tour charters are authorized.

The average cost for this round trip on a pro rata charter flight has been in the area of $250, not including administrative and other expenses, which, if added, would bring the average to about $275. The differential, therefore, depending on equipment used, has ranged from $175 to $211 if all expenses of the charter are pro-rated and $200 to $236 if only the air transportation portion of the charter is considered.

Under the IATA group fare program which was approved by the Board on April 16, 1962, this differential is now $3 to $25, if all charter expenses are included, or from $28 to $50 if just the air transportation part of the charter is counted.

The group fare program is experimental and is scheduled to expire on March 31, 1963, unless further extended by the IATA and approved by the Board. It is applicable to "affinity" and "spontaneous" groups and offers these groups a 38 percent discount on economy-class round-trips. It does not permit travel between 7 a.m. on Friday and 7 a.m. on Monday eastbound during May, June, and July and westbound during August, September, and October; and it is available only for transportation between on-line points which so far as the United States is concerned includes New York and Boston.

19484

Most of the applicants readily concede that this reduced fare plan will have some adverse effect on the pro rata charter market. Prior to the Board's decision on the IATA Group Fares[31] some of the applicants predicted dire results

[31] Order E-18224, *supra*, page 10.

for the charter market,[32] and at the hearing in this case they continued to recognize that these promotional fares would divert traffic from the charter field. Witnesses for two of the applicants, agreed that, absent comparable authority by the Part 295 carriers, their forecast for 1963 would have to be revised downward by 50 percent to account for the impact of the group fare. The intervenors, Pan American and TWA, concluded that the group fare program will substantially supplant transatlantic charter travel and Pan American estimated that this program would divert 75 percent of the Part 295 carriers' charters and 65 percent of its own charters and those flown by TWA.

Since group fares are designed to tap the same traffic source that feeds the charter business, it is apparent, as the Board has previously observed,[33] that there will be a decline in the volume of charter travel. Following the announcement of the group fares plan in early 1962, a number of previously arranged charters were cancelled. Flying Tiger lost 23 or 24 charters, Pan American 27, and Seaboard 10.

19485

The full effect of group fares on charter travel has not been experienced since the group fares were not approved

---

[32] Modern, ONA, Saturn, and World in a joint memorandum, filed in Docket 13479 concluded: "The prospect is that the new group fare discount will effectively replace or supersede the transatlantic market as we know it today." In the same docket, at oral argument, counsel for Riddle spoke about the "drying up" and "elimination of Part 295 business" as a result of the group fare; and Seaboard, at the same time, was of the opinion: " . . . that this group rate will place in jeopardy the passenger charter business in the North Atlantic."

[33] Order E-18224, *supra*, page 13.

until well after a large percentage of the 1962 charters had been arranged. The 1963 charters will be negotiated this fall and winter in the face of the existence of group fares, and next year should give a fairly accurate picture of the future potential for charter services.

Meanwhile, it is pertinent to note, as the applicants insist, that the group fare program is not superior in all respects to charter services. There are several infirmities in the program which should lessen its impact upon the charter market.

First, as noted above, it is not available for weekend travel. While this is not a serious handicap since the experience of the applicants indicate that 75 percent of their charter traffic moves during the week days, there are some groups which must begin their tours on the weekend in order to take full advantage of their vacation leave. Industrial groups generally fall into this category. Although Pan American suggests that industrial groups are willing to adjust vacation schedules so as to allow their employees to take advantage of group fares, the testimony of the president of two travel agencies in New York City shows that there are industrial plants which release thousands of employees for vacations, beginning on week-ends, and these plants account for many transatlantic charters.

Secondly, since group fares do not apply to off-route points, group travel to and from off-route points cannot be handled by single-plane services. During the period 1959-61 Capitol operated 139 charters of which 63 originated at cities in the U. S. which would be off-line to

the group fares; and in 1961 nearly one-third of the charters flown by Flying Tiger were between points which would not be covered by the group fares. While only 12 percent of Pan American's charter flights during the period January-August 1961 were off-line to that carrier, Pan American rejected 444 charters during substantially the same period, and it could not say how many of the latter were off-line and how many were refused for that reason.

Finally, group fares are not sufficiently low to reach any large volume of European group travel. This group movement is proposed to be served by the applicants through the inauguration of low directional fares.[34] Flying Tiger initiated such a program in 1961 with fares ranging from $120-$150 for a round trip. It was successful in attracting a number of European-originated charters, mostly university students. Approximately 90 of Riddle's 1962 charters are European-originated and it was estimated by Riddle's International Sales Director, whose experience in the travel business covered 15 years and who served as European sales manager for Greyhound Bus, that Riddle could double its volume of European traffic in 1963. He testified that, in addition to England and Scandinavia, a great potential market exists in other countries such as Germany, Holland, and Switzerland. Another witness, who headed travel agencies specializing in group tours and transportation of large group movements, testified that there is a latent European demand for travel to the United

[34] Whether such fares will violate Section 404(b) of the Act is not in issue here.

19487

States which is impeded by the cost of transatlantic transportation. He felt that the group fares would meet only part of this demand. In his opinion the low directional fares proposed by the supplemental carriers "will do more than any other thing else to promote European travel to the United States."

These impediments in the group fare program should soften its impact upon the charter market. In addition, while the group fares are competitive price-wise with the pro rata cost of charter services, the fact remains that there still exists a sufficient differential to attract some individuals and groups such as families on limited budgets, industrial works, and university students. Under the proposals of Seaboard and Riddle, which would involve the use of prop jet or pure jet equipment seating 165 to 186 passengers, the differential would be much greater.[35] However, unless split charters are authorized, it is unlikely that this type of equipment would be widely employed in charter services since the number of groups in excess of 100 passengers per group would appear to be limited.

Also lessening the impact of the group fare program on the charter market is the probability that the IATA carriers, including Pan American and TWA, will not be able to accommodate all group travel during the peak months of the vacation season. A travel agent testified that, at the

19488

time of the hearing in 1962, it was difficult to secure group space eastbound between June 15 and July 25 and west-

[35] For a New York to Paris flight they show a differential of $100-$114.

bound between August 15 and September 15. As of May 10, 1962, TWA was unable to accommodate 86 groups seeking reservations. A majority of these groups requested space on specific flights during the last two weeks in June and the first week in July. However, only ten were offered alternative dates within one to three days of the date on which they sought reservations. While Pan American had been able to accommodate all groups for the period May 1 through July 15, 1962,[36] it acknowledged that there may be times in the future when some groups cannot be carried. In all probability the 1963 transatlantic pro rata and single-entity charter market will be somewhat less than the 1961 volume of 203,000 passengers unless the concept of charter service is broadened to include charters by travel agents for all-expense group tours or unless the applicants are granted split-charter authority to compete with the group fare program. Either of the modifications to the present Part 295 regulations would expand the charter potential. The former would more than balance the impact of the group fares.

Historical Participation. The table below shows the number of one-way charter passengers generated by the Part 295 carriers on pro rata and single-entity charter flights during the five-year period 1957 thru 1961. It also

19489

shows the percentage which this traffic bears (a) to the total charter market and (b) to the total transatlantic market:

[36] It had booked only 38.3 percent of its economy-class seats during this period.

(19489)

Year	Passengers	Share of Total Charter Market	Share of Total Transat. Market
1957	31,063	44%	3.0%
1958	33,650	37	2.6
1959	32,855	30	2.2
1960	28,728	17	1.5
1961	49,125	24	2.3

In producing the above traffic the Part 295 carriers averaged 377 one-way charter flights per year with a low of 291 flights in 1960 and a high of 487 in 1961. The combined services of Pan American and TWA, on the other hand, provided an average of 411 one-way flights per year with a low of 334 flights in 1957 and a high of 474 in 1960. Yet, Pan American and TWA failed to generate as many passengers as the Part 295 carriers in four out of the five years and their combined yearly average volume was 2,689 passengers less than the Part 295 carriers.

The penetration of the foreign flag carriers increased each year. In 1957, operating 264 flights, they generated only 16,358 passengers which represented 23 percent of the market. By 1960, flying 1,223 one-way charters, the foreign flag carriers had captured 58 percent of the market, and they held substantially the same advantage in 1961. In the five-year period they had increased their share of the market by 34 percent. In the same period the share of the Part 295 carriers declined 20 percent and that of Pan American and TWA 14 percent.

The decline in the U. S. carriers' share of the market cannot be attributed entirely to the increased efforts of

19490

the foreign flag carriers. As pointed out earlier the charter market is intensely seasonal and carriers do not always have equipment available to meet the demand by charter groups. As a witness for Pan American explained "the demand period is sharply peaked," and ". . . you may have as much as 15 requests for the same day and the charterer refuses to accept an alternate day." Seventy-nine percent of the transatlantic charters refused by Pan American during 1951 were to have been flown in the April-September period and 72.4 percent in the June-September period.

In 1961 Pan American refused 375 round trip and 54 one-way charters because of the lack of equipment. At the time of hearing, Pan American had turned down 60 DC-7C requests and 48 jet requests for charters in 1962. At the same time it also had 277 jet charters and 618 piston charters waitlisted. Since Pan American's experience in 1961 shows that less than five percent of its waitlisted charters were flown, it is probable that as many as 587 piston and 263 of the jet waitlisted charters will be refused in 1962, making a 1962 total of 958 charters which Pan American cannot fulfill.

Operating Experience of Part 295 Carriers. Since 1957 there have been 16 Part 295 carriers engaged in transatlantic operations. Of this number only two, viz, Flying Tiger and ONA have continuously provided charters up to the present time. Yet, these carriers, as is noted from

19491

the table below, which show one-way pro rata and single-entity charters, have not offered a consistent level of service over the entire span:

(19491, 19492)

	1957	1958	1959	1960	1961	Estimated 1962[37]
Flying Tiger	154	102	14	28	134	134
ONA	34	45	140	10	3	8

The relatively small number of charters operated by Flying Tiger in 1959 and 1960 resulted from that carrier's determination not to stress charters "due to the rate situation" and to the "competition from foreign carriers." The inconsequential number of charters operated by ONA from 1960 is attributed to its MATS commitments while the small number in 1961 and 1962 is attributed to the low rates and the competitive situation.

Seaboard operated continuously from 1957 thru 1961 and it alleges that it is considering the operation of some commercial charters in 1962 with its CL-44 aircraft. It had contracts for performance of 120 one-way Constellation charters in 1962 but pursuant to its program to phase out this equipment, Seaboard leased its Constellations to Capitol on an option to buy basis and then transferred the charter contracts to Capitol. USOA operated continuously from 1957 to 1961 but dropped from the market in 1962 because of the downward trend of the prices of charters.

19492

The extent to which Seaboard and USOA participated in the transatlantic charter market is shown below:

	1957	1958	1959	1960	1961
Seaboard	17	7	27	21	15
USOA	9	18	2	10	6

[37] Based on signed contracts and contracts with deposits.

Capitol did not operate any charters in 1957 and only eight in 1958. However, in 1959 it performed 71 one-way charters and increased these thereafter. Riddle did not enter the transatlantic passenger charter market until 1960 and then only on a modest basis for the first two years. Its record along with Capitol's is shown below:

	1958	1959	1960	1961	Estimated 1962
Capitol	8	71	101	87	81
Riddle	—	—	18	27	226

Cal-Hawaiian participated in the charter market for three years, operating two charters in 1959, thirty-five in 1960 and thirteen in 1961. It has no charter program proposed for 1962. Saturn initiated transatlantic charter service in 1961 operating 17 in that year. Its plan for 1962 calls for 41 charters. The remaining five applicants did not engage in any transatlantic charters during the period 1957 to 1961 and they have no plans for performing such charters in 1962.

Thus, of the 13 applicants in this proceeding only 8 have been active at one time or another in the transatlantic charter field, and not any of these or the other Part 295 carriers have provided a consistent level of service over a substantial period of time. From 1957 to-date four

different carriers have shared the top rank in generating transatlantic charters. Flying Tiger led the field in 1957 and 1961, ONA in 1958 and 1959, Capitol in 1960, and Riddle, on the basis of signed contracts and deposits, in 1962. Over the entire 6-year period Flying Tiger has operated the greatest number of charter flights and hence,

from this standpoint, is the most experienced of all the Part 295 carriers. Not too far behind, however, are ONA and Capitol, and Riddle's 1962 intensified efforts place it among the four leading transatlantic charter operators.

The financial results of applicants' transatlantic charter operations have been almost as irregular as their participation. ONA's calculations show that its charter operations for the five-year period 1957 through 1961 have resulted in an operating loss of approximately $175,000. In this period ONA experienced two profitable years, and in neither of these years was its profits substantial.

Flying Tiger calculated that it had operating profits in four out of the five years between 1957 and 1961, and that its total net operating profit over the entire period amounted to approximately $1.2 million. However, its calculations would seem to overassess its charter earnings in view of ONA's experience, and the financial results of other carriers in the field. This is also suggested from Flying Tiger's computations for 1957 and 1960 in which it shows operating profits of $637,000 and $91,000, respectively, for its transatlantic charters, whereas all of its other services, including CAMS, incurred an operating

19494

deficit in those years. For example, in 1957 Flying Tiger's operations, other than transatlantic charters, developed roughly 12 times the revenue generated by such charters but sustained a loss of $245,000; and in 1960 all of its other operations produced 44 times the revenue yielded from transatlantic charters but suffered a loss of $1,217,000.[38]

[38] In 1958 transatlantic charters accounted for 10 percent of Flying Tiger's total company profits and for nearly 20 percent in 1961.

Over the five-year period profits from Flying Tiger's transatlantic charters represented 29 percent of the total company profit for the period.

While Flying Tiger may have actually experienced the favorable results produced by its allocations and computations, its action in substantially reducing transatlantic charter services in 1959 and 1960[39] and its proposal to limit the amount of equipment to be used in this market in the event of certification herein, does not suggest it. It is more likely that Flying Tiger's allocation of revenues and expenses created an abnormal financial picture similar to the one developed by Capitol whose allocation is shown in the table below:

Year	Total Company Operation Net Operating Profit	Transatlantic Charter Operations
1958	($117,404)	$21,530
1959	($203,653)	95,363
1960	131,067	373,961
1961	285,980	280,294

19495

Under close scrutiny Capitol conceded that this allocation did not correctly reflect the amount of profit applicable to the total company operations, on the one hand, and transatlantic charter operations, on the other. Upon request it recalculated its 1961 charter operations on the basis of a more realistic allocation and arrived at a profit of $112,683, instead of $280,294. But even this calculation appears to

[39] While Flying Tiger relates this curtailment in service to low rates and competition, it substantially increased its service in 1961 when the competition and rate situation was no different than in 1959 and 1960.

overstate the amount of profit since it does not take into account certain higher overseas costs and does not make necessary adjustments for the differences in equipment used by Capitol.

Although Riddle operated transatlantic charters in 1960 and 1961 it segregated its transatlantic charter operations from its total operations only for the 1961 season. This allocation discloses that Riddle's transatlantic charters resulted in a loss of $27,905.

Seaboard, on an added cost basis, experienced an operating profit of about $8,000 over a five-year period without considering ferry mileage. In four of the five years Seaboard shows that it had minor profits. Other estimates include a $105,000 five-year operating profit by USOA, a three-year profit of $20,000 by Cal-Hawaiian[40] and a $6,329 loss by Saturn for the 1961 season.

19496

SPLIT CHARTERS

Although applicants differ in some minor respects as to split-charter authority, generally speaking they would have it embrace the transportation of several different groups, either "affinity" or "spontaneous", on a chartered aircraft so long as each group numbers not less than 25 passengers. This authority is sought primarily as a competitive device to recapture the traffic lost to the IATA carriers by virtue of the group fare program.

According to a traffic expert representing four of the applicants, split-charter authority would enable the Part

[40] In 1959 Cal-Hawaiian operated one round trip charter. According to the carrier's estimate this accounted for 26 percent of the company's total profit.

295 carriers to attract traffic equal to that which would be taken away from them by the IATA group fares. Another witness, the director of finance of World, was of the opinion that such authority is essential if the Part 295 carriers are to maintain a competitive position in the transatlantic charter market and utilize large jet equipment. Seaboard's senior vice-president held a similar view, maintaining that any carrier selected to provide transatlantic charter service must have authority to carry less than planeload groups. Other witnesses were of the same opinion, and their testimony was to the effect that, with the advent of modern aircraft carrying from 118 to 165 passengers, the market for planeload charters is limited and unless split charters are authorized the small charterer will be unfairly prejudiced.

While small "affinity" or "spontaneous" groups which are unable to generate sufficient traffic for planeload charters may be handled by the scheduled carriers under

the group fares they will still lack the advantage of the slightly lower cost of charter service which is available to large groups. Witnesses pointed out that students of small colleges cannot avail themselves of the smaller cost advantage of charter service which is available to students of large colleges that find no problem in generating planeload charters. This is also true, they said, of employees of small organizations and members of small national-origin groups. It was suggested that split-charter authority would enable such students, employees and members to take advantage of the cheapest form of air transportation that is now available, and that such authority, coupled with

directional fares as proposed by the applicants, would also facilitate the development of European-originated group air travel.

Pan American claims that split charters will be unworkable. According to Pan American, in order for split charters to operate successfully, either all groups on a flight must originate and terminate at the same destination and return at the same time, or else the carrier or one of the groups must bear the expense of the ferry mileage involved in the multiple origins or destinations. Even if the groups on a flight are matched for origin and destination, Pan American suggests that such groups must be of exactly complementary size or some seats must go empty, thereby increasing the pro rata cost of the trip to all passengers.

The applicants, however, do not agree with Pan American. Their witnesses point out that, tariff-wise, a group

of 25 persons or more can pay its proportional share of the planeload charter price,[41] and the carrier can coordinate its split charter reservations so as to produce flights to one destination or to two closely located destinations such as London or Paris. Under these conditions there would be little, if any, ferry mileage involved. In the case of Flying Tiger that carrier proposes publishing a point-to-point rate as it has published in the past with built-in ferry mileage, so that there would be no apportionment of ferry mileage between groups.

---

[41] For a 118-seat Super Constellation the price for a group of 25 persons would be 25/118ths of the total aircraft cost.

In making reservations for split-groups the applicants do not expect to encounter any particular difficulties. Flying Tiger likens this problem to the one of tying in outbound flights with inbound flights with which it was very successful in 1961 as indicated by its low volume of ferry mileage. However, aside from Seaboard, other carriers have not been so successful. As subsequently pointed out, in some instances ferry mileage has reached as high as 100 percent of the live mileage.

19499

Group Tour Charters

The testimony of travel agents appearing on behalf of some of the applicants or ASTA indicates that a program designed to enable travel agents to charter aircraft for transportation of all-expense paid tours would tap a new low-income travel market which has not been reached by the scheduled services of the IATA carriers. The testimony also establishes that, while agents will generally welcome this opportunity to exploit a low-income travel market, there may be some agents who will be unwilling to run the risk of chartering aircraft.

For a number of years the Air Ministry in Great Britain has issued licenses to operators to conduct so-called "inclusive tours." These tours have included the price of the air transportation, hotel accommodations, sightseeing, etc., and in all major respects they are comparable to the all-expense group tours which are in issue here.

Under the British practice each "inclusive tour" must be approved by the Air Ministry. After an application to operate such a tour is received, notice is given so that the

(19499, 19500)

regular route carriers may oppose the tour charter on the grounds that it would be diversionary. In order to guarantee that such services do not materially divert traffic, licenses are subject to the condition "that the price of the tour shall be a price not less than the public return scheduled fare." This condition is recognized by the IATA carriers as a prerequisite to those carriers participating in inclusive tours on a charter basis in the European area.

19500

IATA Resolution 045, paragraph 8 provides:

> "* * * the price paid by the passenger for inclusive tours performed on a charter basis shall not be less than the lowest, applicable fare for the type of service used available to the public on the same route * * * ."

Since 1955 the British inclusive tours have shown a remarkable growth as indicated in the table below:

Year Ending in March	Passengers
1956	45,995
1957	92,081
1958	137,416
1959	180,014
1960	166,671
1961	198,689

Not one of the applicants or intervenors has made any specific forecast of the number of passengers that would move on all-expense tour charters. Capitol, conceding that "no reasonable basis could be found for calculating the

results statistically" arbitrarily decided that the historic volume of transatlantic charter traffic should increase conservatively by 10 percent under such new authority; while a traffic expert appearing for ONA, Saturn, World and Modern indirectly set the figure at 30,000 passengers.[42] Using the latter figure and assuming the historic British pattern ASTA on brief computed a 1968 market at 129,600 passengers.

While, as Capitol concludes, there is no reasonable basis upon which an accurate appraisal can be made, it is virtu-

19501

ally certain that there is a large potential for all-expense tour charters. Almost 13 percent of Pan American's economy fare passengers are members of all-expense tours, and there is no reason why the experience of the other IATA carriers should have been substantially different.[43] In 1960 there were 1,454,506 transatlantic economy fare passengers who used the services of the IATA carriers, and the number in 1961 was probably in excess of 1.6 million. If 13 percent of these passengers were members of all-expense tours then the 1961 transatlantic all-expense tour market exceeded 200,000 passengers.

A significant part of this market could be attracted to all-expense tour charters since the pro rata cost for such charters will be substantially less than the present economy

[42] This witness estimated that the Part 295 carriers would handle 50,000-70,000 passengers under liberalized operating conditions and 80,000-100,000 if, in addition, all-expense group fare authority were authorized.

[43] Fifteen percent of TWA's transatlantic revenues are attributable to all-expense tours.

(19501, 19502)

fares. In addition, as pointed out by witnesses, a new low-income stratum of traffic, untouched by the economy fares, should be stimulated thus swelling the total charter potential, including planeload charters, well beyond the 1961 experience.

19502

DIVERSION

Pan American concedes that, before the adoption of the group fare program by the IATA carriers, the charter services of the Part 295 carriers were essentially non-diversionary since such services attracted traffic that would not otherwise have traveled by air except for the low charter cost and since Pan American and TWA were unable to meet the demand for such charters with their own equipment. Now that the group fares are available Pan American contends that every passenger that will move by a Part 295 charter in the future will represent a passenger diverted from the IATA scheduled carriers. This contention is based on the premise that every passenger entitled to travel on a Part 295 charter can now move on the scheduled services of the IATA carriers at comparable fares.

As noted earlier, there are infirmities in the group fare program which render it unsuitable for the complete exploitation of "affinity" group travel. Group fares will not reach the bulk of European-originated group travel and there will be periods during the summer vacation season when they will not meet all demands for U. S.-originated group travel; nor is it likely that group fares will attract groups that cannot be reduced below a plane-

load number.[44] In these circumstances, as pointed out previously, there will continue to be a demand for transatlantic charters, albeit on a reduced scale, which cannot be met by the group fare program.

19503

This being so the charter services should continue to be as non-diversionary as they were before the advent of group fares. As to traffic that can be feasibly handled under the group fare program it is hardly possible that it will be reattracted to charters. There is considerable evidence to the effect that, fares being substantially the same, passengers will invariably prefer the scheduled carriers over charter services of the supplementals.

The possibility of diversion becomes more apparent where split charters are concerned. This authority is sought to neutralize the impact of group fares on the charter market, and under it the Part 295 carriers would obviously recapture some of their former business as well as part of the newly generated group fare business. The group fare program is expected to stimulate a substantial amount of new traffic from smaller organizations which have been unable to develop planeload movements.

Initially, split charters are not likely to attract many groups that can be accommodated under the group fares. This is due to the fact that DC-6's, DC-7's or Constellations would be used by the charter carriers, and the fare differential between this equipment and the jets of IATA carriers would be relatively small. However, this situa-

[44] Pan American and TWA's group fare reservations for 1962 indicate that the average size groups under this program will be less than 35 passengers per group.

tion would not prevail after some of the applicants inaugurate jet or jet-prop charters as they have planned. These services, as mentioned earlier, would be provided at substantial fare reductions over the group fares. Because of their size these aircraft are ideal for split charters, and

19504

with such a fare differential, it is apparent that these would attract some of the group fare business. The volume that could be attracted might be substantial if considerable service is provided.

A more serious diversionary threat is posed by the all-expense tour charters. Pan American and TWA depend heavily on the sale of air transportation by travel agents. Of Pan American's group fare sales 80 percent have been made by agents, and more than 60 percent of its regular air transportation business has been sold by travel agents. The extent to which such agents will continue to be a powerful sales force for Pan American and TWA may be affected if they are authorized to openly solicit individual members of the public for low cost all-expense tours on chartered aircraft. ASTA seems to feel that the price provision, viz, not less than the lowest prevailing IATA fares, plus prepayment and refund requirements as well as unit travel should protect Pan American and TWA from any serious diversion. Only the all-expense group tourist of Pan American and TWA, according to ASTA, would be exposed to diversion.

As mentioned earlier 13 percent of Pan American's economy fare passengers are travelers on all-expense tours sold by travel agents and 15 percent of TWA's transatlantic revenue is derived from the same source. Less than

one-half of Pan American's all-expense tourists travel in groups and ASTA figures that not more than one-third of these, if any, should shift to all-expense tour charters. On this basis it calculates that Pan American would lose

19505

over 2,000 passengers based on its 1960 experience. This would amount to only 0.6 percent of Pan American's scheduled passengers for that year.

Since the group fare program is applicable only to affinity and spontaneous group travel, agents cannot use this program in the same manner as all-expense charters. They cannot solicit members of the public for group fares. Hence, the fare differential between an all-expense tour via the scheduled services of the IATA carriers and such a tour via a Part 295 charter will not be based on group fares but on the more expensive economy fare. This differential, as previously pointed out, averages about $200 for a New York-London round trip. When these savings can be passed on to potential tourists it will be a substantial inducement to utilize a charter flight rather than the more expensive regular service of an IATA carrier. Not only should it attract the group tourist but also the independent tourist who prefers economy to independence.

In 1960 Pan American carried approximately 218,000 economy fare passengers and the number was probably much larger in 1961. Considering that 13 percent of these passengers were on all-expense tours, the number that would be exposed to diversion (and this includes the independent tourist) today would probably be in excess of 30,000 passengers. Similarly, the revenue which TWA derived from passengers using all-expense tours over its

transatlantic routes would be subject to diversion. This amounted to $12½ million in 1961. The amount of actual diversion from Pan American and TWA would depend on the number of travel agents that would be willing to run the risk of chartering aircraft and whether split charters would be available. Without the latter the actual

19506

diversion would be somewhat less.

In 1961 Pan American had an operating profit of $2,432,000 from the Atlantic sector of its system. Its investment in this sector amounted to $206,267,000. Thus, its return on investment amounted to 1.2 percent. In the same period TWA lost $3,718,963 from its international division. Its average annual net loss on international services for the period 1956-1961 was $873,000. TWA has figured that for every 3,437 passengers diverted from TWA's economy-class service (one percent drop in load factor) there would be a correspondingly revenue loss amounting to $904,000.

19507

OTHER MODIFICATIONS TO PART 295

Eligibility Requirements. Under Section 295.30 any organization which has a membership in excess of 20,000 (except a college or university located in one area) is not eligible to participate in pro rata charters. Behind this limitation is the theory that large organizations cannot be distinguished from the general public which is a prohibited area for Part 295 charters. At one time the IATA carriers observed this limitation but it is not incorporated in the group fare program. There is no restriction on the

size of organizations from which eligible affinity groups can be organized.

The applicants contend that, if for no other reason than to place them in an equivalent competitive position with the IATA carriers, the size restriction should be eliminated. Some groups, such as the Lions Clubs and the British Bar Association which otherwise satisfy all affinity requirements, are prohibited from obtaining the charter services of the Part 295 carriers.

In addition to the size eligibility requirement, the regulations provide that only bona fide members of the charterer and their immediate families may participate as passengers on a charter flight. (Part 295.31.) The immediate family of a member is construed to include only the spouse, dependent children and parents living in the same household. (Part 295.32.) ONA proposes that the

19508

definition of charter organization include—

> "members of a family descended from grandparents of the members or from the grandparents of a member's spouse, whether living in the same household or not, so that such family member may participate in the charter."

The only explanation of this proposal appears in ONA's brief in which it is suggested that the amendment would be more agreeable to Europeans and boost the "Visit to USA" program. The brief cites the following testimony of an operator and owner of a travel agency in New York with reference to general group eligibility requirements:

(19508, 19509)

> "The confusion and difficulty engendered by Part 295 are particularly great in connection with European originated travel. * * * If the group eligibility requirements of Part 295 are substantially relaxed, I believe that a tremendous amount of additional travel will be developed both in the United States and in Europe."

ONA then assumes that this testimony was directed to the above proposal.

Restrictions on Travel Agents. At the present time, under Section 295.20, travel agents may not assist in the organization or assembly of a charter group. In other words, they may not contact members of a chartering organization in order to generate a planeload of passengers. Solicitation must be from within the charter organization and this is usually by an officer of such organization who is not experienced in the field of travel.

It is suggested that this is an inefficient method of arranging charters. According to ASTA, because of a travel

agent's experience with charters and regulations, he can do a much more effective and efficient job in organizing groups than can an amateur member of an organization. It is suggested that the agent would be less likely to solicit the general public because of his knowledge of Board requirements. ASTA also believes that the agent would be able to organize the charter with greater efficiency and therefore with less administrative expense.

The vice-president of a large travel agency in New York testified that "it does not make sense that the solicitation

must be done by amateurs who sometimes come to us for advice and materials to help them solicit," and a regional sales manager of Thomas Cook & Sons, commented that "if the organization is bona fide there seems to be no reason why every effort should be made to make a planeload of passengers from within the organization." According to the latter, it is not the same as soliciting from the general public and agents therefore should be able to use their usual selling techniques as long as they are directed to eligible prospects.

The travel agency industry is also opposed to the rule which prohibits travel agents from soliciting for land tours within a charter organization. Section 295.21 prohibits a travel agent from dealing with individuals for land tours unless such individuals initiate the contact and request land tour arrangements different from a chartering group as a whole. ASTA contends that the purpose of this rule is obscure unless it is to insulate the travel agent from contact with individual charter passengers. The testimony of witnesses indicates that agents do not,

19510

as a rule, encourage members of a charter group to take tours different from those arranged for the group as a whole. The agent will do better financially if they all take the same tour. According to the witness, if agents solicit charter participants to take a tour other than the main tour, the agent would be diluting his own profits. There is no comparable provision under the IATA group fare program and the Board has not seen fit to impose such a requirement.

Finally, travel agents object to the regulation (Part 295.22) which prohibits agents from receiving, directly or

indirectly, any commission or compensation for a charter flight or a land tour if they are members of the chartering organization. They point out that although an agent who is a member of a prospective charter group may have nothing to do with initial efforts to formulate a charter, he would be the logical organizer once the decision is made. Yet he is precluded from doing this unless he forfeits his commission.

In 1960 the Hartford Archdeaconary of the Episcopal Church chartered a plane through the Davis-Travel Service, Inc., of Hartford. One of the members of that archdeaconary, which included 34 parishes in that area and about 17,000 members, was a travel agent. He made the arrangements for the tour and when he applied for his fee from the IATA charter carrier he was unable to collect because at that time the IATA charters were subject to prohibition similar to Part 295.22. This same agent, as a member of a ski club, was ineligible for commission

on a charter being arranged by such club; the charter was turned over to a competitor who did not belong to the club. Another agent, a member of the Harvard Club, was unable to handle two charters by that club in 1962, and still another agent, a member of the British War Veterans, resigned from that group in order to handle their charters.

The rule is considered very offensive by travel agents. It is not included in the IATA resolution regulating group fares and the Board, as a condition of approval, has not required it.

19512

Conclusions

Utility of Transatlantic Charters. Although it is too early to appraise the impact of group fares upon transatlantic charter services, it is readily apparent that this program will diminish the utility of charter services as they are presently operated by the Part 295 operators and the IATA carriers. While group fares are temporary and will expire in 1963 unless further extended by the IATA carriers and approved by the Board, the indicated success of this program, as suggested by Pan American's and TWA's group fare reservations for 1962, makes it unlikely that it will be dropped by the IATA carriers.

The expansion of the charter concept to embrace split charters would increase public response to charter service by bringing smaller organizations which cannot afford the charter of the entire capacity of an aircraft within the charter potential. And the inclusion of authority to charter aircraft to travel agents for all-expense tours would, as noted earlier, extend charter service to a substantial new area of business whose potential is significant. In combination these proposed amendments to the present charter regulations would make possible the charter of aircraft by one or more travel agents for the movement of several all-expense tour groups. The potential transatlantic charter market, under these conditions, and including the volume currently available, could total 400,000 passengers as predicted by a traffic witness for Flying Tiger, with well over one-half of it being comprised of all-expense tour passen-

gers of which a significant part might be Europeans whose travel to this country would be in furtherance of the "Visit America" movement sponsored by the Department of Commerce.

Since this charter potential will exist by reason of cost of service rather than by reason of peculiarity of service, most of it could be handled by the IATA carriers in their scheduled operations if the fares were equal. They possess the physical capacity to handle it since most of them have completed the transition to jet fleets with the result that seats for transatlantic scheduled services have increased 87 percent since 1958, rising from 1,745,000 in that year to 3,267,000 in 1961. If the rest of the IATA carriers follow Pan American's plan to increase economy seats 27 percent in 1962, there will be available this year about four million seats of which, as suggested by the load factor data appearing on page 39, there will be a substantial number empty. In 1961, even during the heavy travel season, which was the 6-month period May through September 1961, the IATA carriers had nearly 700,000 empty seats on their economy-class services, and TWA and Pan American accounted for 227,000.

The group fare program was designed to improve the empty seat problem and insofar as "affinity" group travel is concerned that program, as determined earlier, should be effective in reducing the demand for charters. A similar program of reduced fares directed to the low income all-expense tour market could have a corresponding effect on the need for all-expense tour charters. However, in the absence of such a program, it would appear that all-expense tour charters would have a significant utility.

Economy of Charter Services. The operating experience of the Part 295 carriers performing transatlantic charter services suggests that such services may be only marginally profitable. The constant shift of the carriers in and out of this market is indicative of an instability. This is caused primarily by the intense competition of the IATA carriers with the consequent debasement of the charter rates. But, also instrumental is the sever seasonality and directionality of traffic.

The competition problem has no foreseeable remedy; it will probably be intensified by the addition of new foreign flag carriers across the North Atlantic. Nor can the seasonality element be eliminated when it is considered that the market involved consists primarily of tourists and vacationers who travel mostly during the summer months. These are inherent economic impediments with which any future certificated charter carrier must contend.

The directional imbalance problem, however, is not insoluble. On the basis of operations in 1961 Seaboard and Flying Tiger were less affected with this problem than were the other applicants. Because of Seaboard's inherent capability of phasing what otherwise would be ferry flights into its common carriage operations, the carrier's ferry mileage was only 12 percent; and Flying Tiger, which had extensive CAM operations and originated some European group charters under directional fares, operated only 11.6 percent ferry miles in its transatlantic charter services. The other applicants, not possessing these advantages, incurred ferry mileages ranging from 31 percent for Capitol to 100 percent for ONA.

The directional problem can be diminished and even possibly eliminated by operational advantages such as Seaboard's, or by matching U. S.-originated charters with European-originated charters. The latter is the plan which most applicants in this case expect to employ through the use of directional fares. This plan, however, provides a practical solution only if the directional fares are approved and the European charters fit into the flight pattern created by the U. S.-originated charters. Riddle's present practice is not to accept European-originated charters unless they match the flight originating in the United States.

Some of the applicants seem to feel that increased volume will reduce the amount of ferry mileage, but at least two witnesses for the applicants were unimpressed with this argument. They were of the opinion that there was not necessarily any correlation between volume of charters and elimination of ferry mileage.

It is perfectly evident, as the Bureau recognizes, that the economy of transatlantic charter service is geared to operations of the carriers authorized to perform such service. Unless such carriers have year-round authority on which to append transatlantic charters as supplementary service or unless they are able to combine some other complementary seasonal operation with such charters, it is unlikely that transatlantic charter service could be remunerative.

Impact of Charter Services upon Certificated Carriers. It should be fairly evident from the earlier discussion of diversion that the charter services of the Part 295 carriers in their present form should have no material impact or

adverse effect on the operations of Pan American and TWA. It is only when these services are expanded to include split charters and all-expense tour charters, thus broadening the traffic base, that the threat of diversion becomes apparent.

The right to operate split charters, unaccompanied by all-expense tour authority, would not seem to carry any unusual competitive implications at the outset since the applicants propose to use piston-engine aircraft versus the jets of the certificated carriers at only moderate fare differentials. Considering such small differentials, and the difficulties entailed in "matching" charter groups with the ensuing uncertainty of whether the charter flight might be arranged, it is unlikely that any sizeable portion of the group fare business would shift over to charter service.

Only in the event of large jet split-charters, which contemplate substantially lower pro rata costs, should there be any appreciable drain on the group fare traffic; and with this being scattered among the IATA carriers, generally the portion diverted from Pan American and TWA should not be unduly great. So far as Pan American is concerned, it could probably absorb the diversion without any noticeable effect upon its transatlantic operations. To TWA, on the other hand, whose transatlantic services have suffered substantial operating losses in three out of four years between 1958 and 1961, the diversion would be more harmful. TWA's transatlantic load factors have been substantially below Pan American's, and it stands to benefit materially from increased traffic stimulated by group fares.

The major aim of the group fare program is to improve declining passenger loads on economy-class services and thus buttress a faltering economy in transatlantic services generally. The success of this program is important to the scheduled carriers, including Pan American and TWA, whose share of the transatlantic market is declining each year. The establishment of competing services, such as split charters, can have only a retarding influence on this program and thus impede its success and the financial improvement of Pan American and TWA. The latter, with a 1961 operating deficit for international operations of over $3.7 million and a 11-year accumulated deficit of over $1 million, can ill afford this result.

Turning to all-expense tour charters, the results would be much more drastic. In spite of the restrictions recommended by ASTA and the others, including Bureau Counsel, this authority would have a far greater impact on the operations of Pan American and TWA than is envisaged by split-charter authority. Not only would such authority expose to diversion the substantial volume of historical all-expense tour business carried by Pan American and TWA but also probably some of their individually-ticketed traffic. What cannot be overlooked here is the fact that travel agents promote and sell a large part of the individually-ticketed transatlantic business. This business, especially the vacation or pleasure travel segment of it, has no immunity from using all-expense group tours, particularly if such tours are at bargain rates. It is logical that travel agents, offering all-expense group tours on flights that they have committed themselves to charter, are going

to channel every prospect possible to their charters in order to preserve their investments in organization and promotion. Furthermore, in arranging and promoting their own all-expense tour charters, travel agents are unlikely to be as effective in selling scheduled air transportation as agents whose efforts are devoted exclusively to this business. Under these conditions Pan American and TWA could expect less traffic sales from those travel agents that go into the all-expense tour charter market.

Are Transatlantic Charters required by the Public Convenience and Necessity? The foregoing discussion dealing with the utility and economy of charter services and their impact on the existing operations of the certificated passenger carriers brings the conclusions here to the question ultimately at issue in this case, viz., do the public convenience and necessity require one or more of the applicants to engage in transatlantic charter service, and if so, under what conditions should the service be authorized?

Before deciding this question, however, it is necessary to advert to recent amendments to the Federal Aviation Act brought about by the enactment of Public Law 87-528, *supra*. These amendments, in their totality, concern primarily charter services by supplemental and all-cargo carriers and the requirements and procedures for authorization thereof.

Amendments to Section 101 of the Act establish the definition of "supplemental air carrier" and "supplemental air transportation." The former is described as an air carrier holding a certificate of public convenience and

necessity authorizing it to engage in supplemental air transportation. The latter is defined to mean charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to Section 401(d)(3) of the Act, to supplement the scheduled service authorized by a certificate of public convenience and necessity issued pursuant to Section 401(d)(1) and (2).

An amendment to Section 401 adds the above referred to subsection (d)(3) which provides:

> "In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in the Act."

Another amendment to Section 401 creates a new subsection (n) which prescribes "additional powers and duties of

the Board with respect to supplemental air carriers." Under this subsection, it is provided, among other things, that no certificate to engage in supplemental air transportation shall be issued or remain in effect unless the applicant for such certificate complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance, in the amount prescribed by the Board.

19520

With reference to all-cargo carriers an amendment to subsection 401(e) grants them off-route charter authority under regulations prescribed by the Board. This authority is contained in subsection (e) (6) which provides:

> "Any air carrier, other than a supplemental air carrier, may perform charter trips or any other special service without regard to points named in its certificate, or the type of service provided herein under regulations prescribed by the Board."[2]

In the Conference Report[45] accompanying S-1969 which was the legislation ultimately enacted into Public Law 87-528, it is explained that the above-referred to section was designed to empower the Board to authorize certificated all-cargo carriers to engage in passenger charter operations under regulations prescribed by the Board. The report further notes that these carriers have performed passenger charter services for MATS and others, and that it may be a desirable supplement to their primary role of conducting cargo operations with charter authority. The report makes clear, however, that Section 401(e)(6)

[45] Report No. 1950, 87th Cong., 2nd Sess.

is only to assist the Board in granting charter authority to the all-cargo carriers in the event that the Board finds the public interest requires it.

In addition to amending the Act, as described above, Public Law 87-528, among other things, cancels all outstanding supplemental authority, but provides that certain eligible supplemental air carriers who have performed substantial operations and whose authority has not been terminated, may file applications for supplemental cer-

19521

tificates pursuant to Section 401(3)(d) within the 30-day period. If within such 30-day period an application is filed, the applicant may then continue to operate for an additional 90 days after enactment. If within 90 days after enactment the Board issues an interim certificate, the carrier may continue its operations until the Board passes on its application under Section 401(d)(3). If, however, the Board denies a request for an interim certificate or takes no action within a 90-day period, the supplemental carrier may not continue to operate beyond such 90-day period.

Pursuant to these provisions all of the supplemental air carrier applicants herein[46] have filed applications for interim operating certificates as well as for more permanent types of certificates to be issued under Section 401 (d)(3) authorizing either foreign or domestic supplemental air transportation, or both. Thus, for a period of at least 90 days from enactment of Public Law 87-528, the applicants in this case, other than Great Lakes, may continue their supplemental operations pending action on

[46] This does not include Great Lakes since its supplemental authority, as previously noted, has been terminated.

these interim applications. Beyond that point their status as supplemental carriers is uncertain.

So far as the all-cargo carrier applicants are concerned, they are ineligible to receive supplemental certificates. The provisions of Section 401(d)(3) are inapplicable to

19522

them since such provisions specifically preclude regular-route certificated carriers from holding certificates as supplemental air carriers. However, as pointed out above, the all-cargo carriers now possess the statutory right, subject to Board regulation, to engage in off-route passenger charters; they do not need any further certificated authority to engage in transatlantic passenger charters other than that which they now hold. Their right to engage in such charters, according to the language of Section 401 (e)(b), is identical with statutory authority of other certificated carriers to engage in off-route charters. The latter are regulated by Part 207 of the Economic Regulations which is applicable to "all air carriers (other than Alaskan air carriers) who hold currently effective certificates of public convenience and necessity issued by Section 401 of the Act."

While Part 207 has not been applicable to passenger charters as a result of a Board ruling and the court's decision in *The Flying Tiger Line, Inc.* v. *CAB*,[47] it might be reasonably contended that, with the enactment of Public Law 87-528, the all-cargo carriers are automatically within its provisions. The fairer view, however, based on the Conference Report mentioned above, which indicates that the Board may withhold passenger charter authority from

[47] 204 F. 2nd 404 (1953).

(19522, 19523)

the certificated all-cargo carriers, is that Part 207 is still inapplicable to passenger charters.

Returning to the point at issue, it should be evident from the conclusions developed thus far that transatlantic charter services, as presently conceived, would continue to serve a useful public purpose, although on a somewhat diminished scale; that the services of the certificated passenger carriers will not be fully responsive to this public need; and

19523

that other carriers can meet such need without undue harm to the operations of Pan American and TWA. Under these conditions transatlantic charter services, by carriers other than the certificated passenger airlines, would be in the public interest.

As to the broader concept of charter, the answer is not so readily apparent. With split-charter authority, the utility of charter services would increase, and with all-expense tour charter authority a large new area of potential air travel could be developed. However, each of these measures would expose traffic of Pan American and TWA to diversion, and, in combination, they would have serious competitive implications.

Under normal conditions, less importance might be attached to the competitive aspects of the broader concept of charter and thus the threat of diversion to TWA and Pan American. Greater emphasis might be placed on the need for developing a large new area of air travel. However, so far as U. S.-certificated flag carriers are concerned their transatlantic services are not in a state of normalcy. Their serious traffic difficulties were noted by the Board in its order instituting the *Transatlantic Route Renewal*

Case.[48] There the Board observed the steady downward trend in U. S.-flag carrier participation in the North Atlantic route market through the years, and after pointing out the disappointing financial results of TWA's and Pan American's transatlantic operations, the Board alluded to an attached "exhaustive study" of these operations pre-

19524

pared by the staff and concluded that:

> ". . . the analysis in the study raises a question as to whether point-to-point competition between U. S.-flag carriers in the transatlantic services should be continued or further steps taken to retain a second U. S.-flag round-the-world service."

An investigation was then ordered to determine whether the routes of Pan American and TWA and Seaboard should be altered, amended, modified, suspended, terminated or renewed in accordance with the staff study.

The study in question points to the "critical competitive situation" between Pan American and TWA and states that this situation "denotes an urgency for action and suggests that Board guidance and leadership in the area would be desirable." It recommends that most major foreign points require certificated transatlantic service by one U. S.-flag carrier and that a Seaboard proposal to engage in experimental "top-off" passenger service be denied for the following reasons:

> "While we recognize the carrier's need for additional revenue while fully integrating its prop-jet fleet into

[48] Docket 13577, Order E-18301, adopted May 4, 1962.

(19524, 19525)

all-cargo service, we feel that authorization of this new service would probably undermine the entire policy suggested in our basic route proposal. Grant of Seaboard's application would result in another passenger-carrying carrier, in addition to the one-carrier services of PAA or TWA. It is suggested that such authority would probably invite additional foreign flag competition."

As clearly indicated by this study and the order which places it in issue in the *Transatlantic Route Renewal Case, supra,* as well as by the facts in this case concerning the transatlantic experience of Pan American and TWA, the time is not "propitious", as the Bureau contends on brief here, for the Board to exercise its promotional responsi-

19525

bilities under Section 1002 of the Act and authorize all-expense tours. Present circumstances are not favorable to the establishment of additional service which might tend to impede future efforts in fostering sound economic conditions in transatlantic operations. The public interest, therefore, compels the denial of proposals for an expanded concept of charter to include split charters and all-expense tour charters.

As previously determined, with charter service limited to the present concept, the 1963 transatlantic market probably should be somewhat less than the 203,000 passengers generated in 1961. On the basis of historical participation, the share of the IATA carriers would be less than 49,000 passengers. However, it is possible that, with the group fare program operating as an alternative for charter services as contended by Pan American and TWA, the

IATA carriers will place such emphasis on that program that their charter services will deteriorate. In this event the historical share of the non-IATA carriers could increase substantially, conceivably beyond 52,000 passengers indicated for 1962.

A normal traffic market of this size might be adequately served by a single carrier. But the extreme seasonality of the transatlantic charter market demands a heavy concentration of service for a short period and very little thereafter. No air carrier could sustain itself on this business alone since its personnel and facilities would be idle a large part of the time; and a single carrier operating other certificated services would find it virtually impossible to meet

19526

the required massive equipment and personnel program for several months and then to readjust to a normal operation.

The only circumstances under which a single carrier could handle the Part 295 charter business on an exclusive basis would be a situation where such a carrier would conduct an exactly complementary operation and thus possess the facilities to shift to transatlantic charters and then back to the other operation. However, this ideal situation is not one in which any of the applicants in this case finds itself. Thus, it is evident that the market for transatlantic charters cannot be adequately and economically served by a single carrier.

The Bureau recommends that three carriers be authorized[49] on the theory that a larger number of carriers would

[49] This recommendation assumes the existence of even a larger charter market than found here since it is based on the authorization of all-expense tour charters.

(19526, 19527)

spread the market too thin thus preventing the establishment of sound charter specialists that presumably are needed "to become effective competitors in a market populated by world renowned air carriers." The Bureau also fears that more than three carriers would lead to a continuance of sporadic operators.

In view of the noncompetitive nature of transatlantic charter services that would be authorized under this decision, there would be no need for strong charter competitors, as urged by the Bureau. Nor is it necessary for each carrier to obtain a substantial part of the charter potential to sustain a profitable operation. The record does not

19527

show that there is necessarily any correlation between the volume of service rendered and economic soundness. ONA operated 140 charter flights in 1959, which was the largest number operated by any Part 295 carrier during that year, and it incurred an operating deficit of $196,889. Yet, in 1960, when it flew only ten charters, it experienced a profit of $13,256.

The economy of transatlantic charter service, as pointed out previously, depends on solving the directional imbalance problem—not on traffic volume or volume of service operated. Both large and small carriers that conquer this problem should experience a profitable operation. Naturally, those carriers that perform the largest number of charters should generate the greatest profits. But by the same token, if the directional problem is not mastered, those that develop the largest operations will suffer the greatest losses.

If, for any reason directional fares as proposed by many of the applicants, should be discontinued or not inaugu-

rated, the opportunity for balanced transatlantic charter operations will be greatly diminished. The only prospect for success under these conditions will lie in integrating transatlantic charters with other operations such as military or cargo charters or scheduled common carriage so as to transform nonrevenue flights into productive services.

Only one applicant, Seaboard, operates scheduled transatlantic common carriage service. The remaining applicants must depend on military contracts or cargo charter flights[50]

19528

to provide the vehicle for converting ferry flights to productive services. However, the military contracts vary in scope and in area of operation from year to year so that not all supplementals or all cargo carriers may operate transatlantically every year. Thus, if only three carriers were authorized for transatlantic charters as recommended by the Bureau and if any of these should fail to secure an appropriate military contract for a particular year, or a contract which would make possible transatlantic flights, the volume of transatlantic charter services could be reduced materially. The authorization of a larger number of carriers would minimize this situation and guarantee a more constant level of service.

Historically, the number of Part 295 carriers providing transatlantic charter flights has run from six to ten per season with an average of eight; and the number operating ten or more charters per season has fluctuated between five and eight, with an average of six. Up to April 1962

[50] The all-cargo carriers possess statutory authority to perform off-route cargo flights.

(19528, 19529)

six Part 295 carriers had contracted to operate 610 charter flights involving 52,300 passengers. Thus, on an average of between six and eight carriers have handled the Part 295 charters up to the present time, with six carrying all but an inconsequential part of the business.

In the face of this experience there would appear to be no logical reason why six carriers could not adequately serve the future transatlantic charter market previously handled by the Part 295 carriers. This number would be consistent with the desirability of keeping transatlantic charter service within its proper role as an incidental or supplementary operation rather than as a business in and of itself calling for specialists.

19529

As to the particular carriers that should be permitted to participate in this service it must be recognized that three of the applicants are certificated to all-cargo carriers, and that all that is needed to authorize them to conduct transatlantic passenger charters is an appropriate regulation. Before this statutory authority was established by Public Law 87-528 the Bureau would have disqualified them on the basis that they were specialists in the cargo field (with a responsibility to develop cargo), and that they might not have an interest in remaining in the transatlantic charter business if their cargo operations should become profitable. Another reason for opposing them was that a seasonal charter program would not integrate well with their operating patterns. Whether the Bureau would have had a different position had Public Law 87-528 been in effect at the time of briefs is not known, but it would seem that the basis of the Bureau's objections would not have been affected.

(19529, 19530)

The record shows that the all-cargo carriers have a strong historical interest in transatlantic charter services, and that they should not experience the problems which the Bureau foresees. Flying Tiger has performed more transatlantic charters than any of the applicants in this proceeding and in three of the six years between 1957 and 1962 either Flying Tiger or Riddle was the top Part 295 carrier in terms of the number of transatlantic charters. Up to April 1962 the three all-cargo applicants in this case had negotiated contracts calling for 480 charter flights. This number represented 79 percent of all the charter flights that had been contracted for by the Part 295 carriers up to that time.

19530

While Seaboard subsequently transferred its contracts to Capitol because of its program to phase out its Constellations, this is hardly impressive proof of its lack of interest in the transatlantic charters as the Bureau charges.

These carriers have engaged in extensive cargo and passenger operations for the military, and Flying Tiger has performed numerous flights for other governmental and international organizations. These activities have not interfered with their scheduled cargo operations and there is nothing in this record that shows that their transatlantic charter activities have followed a similar pattern. On the basis of 1961 transatlantic charters Seaboard and Flying Tiger had the lowest ratio of ferry miles to live miles among the Part 295 carriers. Thus, if seasonal charter programs will not integrate with their overall operating patterns, it is not evident from this record.

The Bureau acknowledges that the all-cargo carriers have demonstrated a greater stability than the supplementals

present time it is not even known which of the applicants will be entitled to engage in supplemental air transportation on an interim basis and, of course, it will probably be a considerable period before their more permanent type applications under Section 401(d)(3) are finally adjudicated. It is the scope and tenure of this latter authority that has such an important bearing on the comparative qualifications of each supplemental air carrier applicant. In these circumstances a final decision on the applications of Capitol, ONA, Saturn, World, Modern, USOA, Admiral, Cal-Hawaiian, and Paramount in this proceeding should be deferred until the Board has determined the scope of other supplemental air services which it will authorize them to perform pursuant to their pending applications referred to above.

Since Great Lakes is not an applicant for a certificate under Section 401(d)(3) in any collateral proceeding or for

any air carrier authority other than that involved herein, there would be no point in deferring a decision on its application here. As determined earlier transatlantic charter service must be incidental or subordinate to some other air carrier authority. Lacking this Great Lakes would be unable to conduct economical operations within the scope of the authority issued. In the circumstances the public convenience and necessity would not require the grant of its application.

Meanwhile Capitol, Saturn, and ONA, which were the only supplemental air carriers with transatlantic charter contracts for 1962, should be permitted to temporarily continue their activities in this area until final decision in this

case; providing, of course, that they receive interim certificates as supplemental air carriers. These carriers, as their previous records establish, are fit, willing and able to perform transatlantic charter services, and to conform to the Act and the Board's rules and regulations thereunder. Capitol had contracts for 83 transatlantic charter flights for 1962, Saturn for 41, and ONA for 9. Capitol has been a consistent and substantial operator of transatlantic charters since 1959, and the failure to extend its transatlantic charter authority pending decision on its application would not only be unjust but unwarranted. To a lesser extent this also applies to Saturn which in 1961 operated 17 charter flights. While ONA operated only three charters in 1961 and ten in 1960, for the entire 6-year period 1957-1962 it ranks as the top transatlantic charter carrier among the supplemental air carriers. To permit it to continue pending final decision on its application would avoid an interruption in its services which have been continuous since 1957. Moreover, should Slick Airways decide not to engage in transatlantic charters in 1963, the continuance of ONA's authority would fill a void and thus be in the public interest.

19534

The other supplemental air carrier applicants did not operate any transatlantic charters in 1962 and those few that did operate charters prior to 1962 had inconsequential records. Thus, the failure to authorize interim transatlantic charter authority for them pending decision in this case would have no effect upon their operations and should have no effect upon the traveling public.

(19534, 19535)

Since a final decision with reference to the deferred applications should be reached before the end of 1963, the temporary charter authority granted herein should not extend beyond the 1963 charter season which, for all practical purposes, terminates September 30, 1963. Such authority should be in the form of a certificate of public convenience and necessity issued under Section 401(d)(3) which should include as part of its terms, conditions and limitations, a provision making the authority subject to, and conditioned upon, compliance with Part 295 of the Economic Regulations as revised herein.

Amendment to or Modification of Part 295. As previously concluded the basic idea of transatlantic charter service should not be disturbed by including all-expense tour and split charter authority. Thus, a "charter flight" as defined in Part 295.2(a) should continue to be so defined. Also, the definition of charter organization appearing in Part 295.2 (h) should be left intact. ONA's proposal to delete "their immediate families" reference in that part in favor of "members of a family descended from the grandparents of the member or from the grandparents of the member's spouse whether living in the same household or not" has no evidentiary support whatsoever. Moreover, this proposal

19535

would appear to be unenforceable since the only method of establishing eligibility would be through the furnishing of documents establishing the lineage of each charter participant which would be impracticable.

The present limitation on the size of eligible organizations seems to be arbitrary and unnecessary at this time.

While it may have been justified earlier, it has no practical utility in the future regulation of transatlantic charters. The group fare program has no comparable limitation and the Board found no reason to impose such a restriction as a condition of approval. If an organization in excess of 20,000 is still regarded as being indistinguishable from the general public, as was apparently the feeling at the time the restriction was imposed, then the restriction would have been required in the group fare program. However, the fact is that the "affinity" requirement is sufficient to remove group fare traffic from the general public; and correspondingly, the membership requirement in Part 295.30, which is equivalent to the group fare "affinity" requirement, is sufficient to restrict charter traffic from the general public. It is unreasonable that organizations such as the British Bar Association and the Lions Clubs and other similar groups, otherwise meeting the eligibility requirements, should be precluded today from planeload charters simply because their membership exceeds 20,000. Accordingly, Part 295.30 should be modified by deleting the last sentence of that section.

The restrictions on travel agents which are sought to be eliminated, viz., assisting in the formation of charter

groups, handling the sale of air transportation to members of the group, engaging in the administration of a charter flight and soliciting individuals for land tours, as well as receiving any commissions for a charter flight or land tour if the agent is a member of the chartering organization would also appear to have little, if any, merit in the future-

(19536, 19537)

regulation of transatlantic charters. These restrictions were part of the Board's design to contain charters within group eligibility scope. Evidently it was thought that to minimize a travel agent's interest in charter services there would be less likelihood of such services attracting ineligible participants from the general public. An agent with a financial stake in a charter occasioned by commissions and fees for assisting in the formation, etc., would have a strong motive for keeping an otherwise defunct charter operative. In this situation the agent might be tempted to solicit ineligible participants.

The restrictions in question were promulgated at a time when unfavorable experience with a number of the irregular carriers and their agents demanded stringent measures to insure that transatlantic charter services by noncertificated carriers would be confined to the prescribed limits. Under this recommended decision charter services will be provided by six carriers, all of whom will hold such authority under or by virtue of certificates of public convenience and necessity. To possess certificated authority they must have been found or must be found to be fit, willing and able to conform to the provisions of the Act and the rules and regulations issued thereunder. Thus, the

19537

climate for future operations under Part 295 or its equivalent under Part 207 should not demand the strict measures that were engendered by the experiences of the early and mid-fifties.

The carriers authorized to provide transatlantic charters will be carriers whose records show compliance with the Act and regulations. The onus of determining the eligibility

of participants will be upon them and it is up to them to see that their agents live up to the intent of the Board's rules. Under these circumstances there is no plausible reason why travel agents should not be permitted to use their expertise either in aiding charter groups to organize or in administering charter flights for them. Similarly, there is no sound basis for continuing the land tour restriction or the prohibition on commissions. These restrictions are especially offensive to travel agents and in the absence of persuasive reasons for continuing them, they should be eliminated.

Accordingly, Parts 295.20, 295.21, 295.22, and 295.24 which cover the restrictions in question should be deleted, and Part 295.23 modified by striking "nor may he receive directly or indirectly any part of the administrative labor cost referred to in § 295.33(c)." The remaining portion of Part 295.23 and Parts 295.25 and 295.26 should be appropriately renumbered.

On brief Bureau Counsel recommends that the protective requirements of Part 399.37 with respect to (a) liability insurance, and (b) substitute air transportation and incidental expenses on the return portion of the charter flight be embodied in Part 295. These requirements are currently

applicable to the Part 295 carriers, conditioning the grant of seasonal exemptions on compliance with them. They were necessitated by such incidences as that involving President Airlines in June 1961 when that carrier stranded a large number of passengers at Shannon Airport, Ireland, and are designed to insure reliable service.

(19538, 19539)

As pointed out previously, under the provisions of Section 401(n)(1), the issuance of certificates to engage in air transportation is conditioned upon compliance with the regulations or orders issued by the Board governing the filing and approval of policies of insurance in the amount prescribed by the Board, etc. Thus, the Act requires implementation by regulation with respect to liability insurance before certificates can be issued to supplemental air carriers. The recommendation of the Bureau would accomplish this necessary requirement and add other protective conditions which are in the public interest. Accordingly, it is found that the provisions of Part 399.37 with respect to liability insurance and substitute air transportation and incidental expenses on the return portion of the charter flight should be incorporated in Part 295.

In addition to this revision the Bureau recommends that a new provision be added to Part 295.31 to assist in the enforcement of the six months membership requirement of Part 295.2(j). The Bureau proposes that the chartering organization be required to maintain central membership lists containing the date each member joined the organization, and that this list should be available to both the car-

19539

rier and the Board. The Bureau contends that the maintenance of such a list should not be a serious burden since most *bona fide* organizations keep such records.

While the group fare program has a six-month membership requirement similar to Part 295.2(j), such program does not provide central membership lists to enforce the requirement. In the case of the group fares the Board has not conditioned its approval on the maintenance of central

membership lists and in the present case the record does not show that there is a compelling need for such a rule. Accordingly, his recommendation of the Bureau should be denied.

Similarly, other proposed amendments or modifications by other parties should be denied for the lack of evidentiary support. There is attached hereto a draft of Part 295 as revised herein. (Appendix B.)

19540

RECOMMENDATIONS

On the basis of the foregoing findings and conclusions and all facts of record it is recommended that the Board find that:

1. The continuation of transatlantic charter services by United States carriers other than the certificated route passenger carriers, as presently defined by Part 295, would serve a useful public purpose responsive to a public need and would not adversely affect the operations of TWA and Pan American or otherwise be contrary to the public interest.

2. An expansion of the concept of charter to include all-expense tour charters by travel agents and split-charter authority, while increasing the potential utility of transatlantic charter services, would be contrary to the public interest since such an expansion would have severe competitive implications, exposing traffic of TWA and Pan American to diversion at a time when their transatlantic services are experiencing serious economic problems.

(19540, 19541)

3. Considering the possibility that the IATA carriers may place less emphasis on charter services because of their alternate group fare program, the 1963 charter market of the non-IATA carriers, under the present charter concept, could reach and even exceed a volume of 50,000 passengers.

4. Because of the severe seasonality and directionality of the market, it would be virtually impossible for one carrier to adequately and economically serve it; and only several carriers would experience difficulty in meeting its demands in the absence of most favorable conditions.

19541

5. Since, historically, six to eight carriers per year have handled the Part 295 charter business, with an average of six per year carrying all but a nominal part, the future transatlantic market can be adequately served by six carriers.

6. With the all-cargo carrier applicants having a strong historical interest in the transatlantic passenger charter services and the ability to integrate such services with other authorized activities, the public interest requires that they be empowered to continue such services under appropriate regulations, viz., under a revised Part 207 corresponding to the requirements of Part 295.

7. Taking into account the possibility that, under a revised Part 207, Slick Airways, Inc., might decide to engage in transatlantic passenger charters, thus making four all-cargo carrier participants, there would be need for only two transatlantic charter carriers from the supplemental class;

but since the future status of the supplemental applicants is uncertain and is necessary to properly evaluate their qualifications, a final decision on the applications of Capitol, ONA, Saturn, World, Modern, USQA, Admiral, Cal-Hawaiian and Paramount be deferred pending decision on their applications under Section 401(d)(3) in collateral proceedings.

8. In view of the fact that Great Lakes is not an applicant for a certificate under Section 401(d)(3) in any collateral proceeding or for any air carrier authority other than that involved herein, the public convenience and necessity require that its application be denied since transatlantic charter services cannot be economically operated as a sole business.

19542

9. Since Capitol, Saturn, and ONA operated transatlantic charters in 1962 and participated in them on a substantial basis in one or more or all of the preceding years back to 1957, the public convenience and necessity require the temporary certification of these carriers to engage in transatlantic supplemental air transportation (in accordance with the certificates attached as Appendices C, D, and E) pending final decision in this case in order to avoid an interruption in their service which has been beneficial to charter travel and in the public interest.

10. Capitol, Saturn, and ONA are fit, willing and able to provide the air transportation found to be required and to conform to the provisions of the Act and the rules and regulations thereunder.

(19542)

11. Failure to temporarily certificate the remaining supplemental air carrier applicants pending final decision on their applications will not adversely affect their existing operations or charter travel since none of them operated transatlantic charters in 1962 and only a few of them participated on a small basis in one or more of the preceding years.

12. Part 295 of the Economic Regulations, which will prescribe the terms, conditions, and limitations of the temporary service by Capitol, Saturn, and ONA, as well as that to be certificated in the future, be revised in accordance with the attached draft in Appendix B.

13. The application of Great Lakes Airlines, Inc., Docket 11955, be denied, and that the applications of The Flying Tiger Line, Inc., Docket 6668, Riddle Airlines, Inc., Docket 12152, and Seaboard World Airlines, Inc., Docket 11971 be dismissed.

19553

APPENDIX B

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

§295.1 *Applicability.*

This part establishes the requirements governing operations of transatlantic supplemental air transportation under temporary certificates of public convenience and necessity issued pursuant to Section 401(d)(3) of the Act.

§295.2 *Definitions.* As used in part, unless the context otherwise requires—

(a) "Charter flight" means transatlantic supplemental air transportation performed by a direct air carrier where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage, on a time, mileage or trip basis:

(1) by a person for his own use (including a direct air carrier or surface carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency); or

(2) by a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for transportation or in the solicitation or sale of transportation services);

With the consent of the charterer, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

(19553, 19554)

(b) "Pro rata charter" means a charter the cost of which is divided among the passengers transported.

(c) "Single entity charter" means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

(d) "Mixed charter" means a charter the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

(e) "Person" means any individual, firm, association, partnership, or corporation.

(f) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(g) "Charter group" means that body of individuals who shall actually participate in the charter flight, except that this term shall not be applicable in the case of tour charters.

19554

(h) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived, except that this term shall not be applicable in the case of tour charters.

(i) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(j) "*Bona fide* members" (not applicable in the case of tour charters) means those members of a charter organ-

ization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public. Presumptively persons are not *bona fide* members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

(k) "Solicitation of the general public" (not applicable in the case of tour charters) means (1) a solicitation going beyond the *bona fide* members of an organization (and their immediate families), such as advertising directed to the general public by radio, television, newspaper, or magazine, or (2) the solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

§295.3 *Waiver.*

A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days

prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

19555

§295.4 *Separability.*

If any provision of this part or the application thereof to any air transportation, person, class of person, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§295.5 *Reporting and record retention.*

(a) Fifteen days after the end of each calendar month, each carrier operating pursuant to this part shall file with the Board's Bureau of Economic Regulation a report setting forth the following information pertaining to each charter flight performed during said month pursuant to this part:

(1) Date of trip;

(2) Points served;

(3) Number of round-trip and one-way passengers;

(4) Name of chartering organization;

(5) Description of chartering organization disclosing basis for conclusion that the group is *bona fide* (identify criteria relied upon) or, in the case of tour charters, description of tour to extent

necessary to establish conformance with requirements of this part;

(6) Name of travel agent; and

(7) Construction of tariff charge.

(b) Prior to performing any supplemental air transportation pursuant to this part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof.

(c) Each air carrier holding operating authority pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

19556

SUBPART A—PROVISIONS RELATING TO PRO RATA CHARTERS

REQUIREMENTS RELATING TO AIR CARRIERS

§295.11 *Solicitation and formation of a charter group.*

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight.

(19556, 19557)

§295.12 *Pre-trip notification.* Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this regulation, Part 295.* The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this regulation and that the charterer shall within due time submit to the carrier such information as specified in §§295.34 and 295.35 hereof and submit to each charter participant the information identified in §295.34. The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§295.36 and 295.23, respectively.

§295.13 *Tariffs to be on file.*

(a) No air carrier shall perform any supplemental air transportation unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for the use of the entire capacity of one or more aircraft in such supplemental air transportation and showing all rules, regulation practices and services in connection with such supplemental air transportation, including eligibility requirements for charter groups

19557

not inconsistent with those established in this part.

(b) Tariffs shall not contain any provisions which are inconsistent with the standard insurance coverage or with

* Copies of this regulation are available by purchase from the Superintendent of Documents, Washington 25, D. C. Single copies will be furnished without charge on written request to the Publications Section, Civil Aeronautics Board, Washington 25, D. C.

the obligations relative to substitute air transportation and payment of passengers' incidental expenses established by §295.14.

§295.14 *Terms of service.*

(a) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter, *provided* that the carrier shall not charge the charterer for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(b) Insurance coverage shall be maintained in full force and effect as follows:

(1) *Minimum limits of liability.*

(i) *Aircraft passenger bodily injury liability.* A minimum limit for any one passenger of $50,000 and a minimum limit for each accident in any one aircraft of an amount equal to the total produced by multiplying $50,000 by 75 percent of the total number of seats or by 75 percent of the total number of passengers carried in the aircraft, whichever is greater.

(ii) *Aircraft bodily injury liability (excluding passengers).* A minimum of $50,000 for one person in any one

accident, and a minimum limit of $500,000 for each accident.

(iii) *Aircraft property damage liability.* A minimum of $500,000 for each accident.

(2) *Terms and conditions of coverage.*

(i) Such insurance contracts shall provide for payment, within the specified minimum limits of liability, by the insurer of any final judgments recovered against the insured for bodily injury to or death of any person, or loss of or damage to property of others, resulting from negligence by the insured, or his duly authorized agent, in the operation, maintenance or use of any aircraft on a flight conducted pursuant to authority granted by the Civil Aeronautics Board to conduct transatlantic passenger charter

flights or under an invalid claim of such authority or on the return portion of a charter flight which was originally conducted under either such authority or such claim.

(ii) The liability of the insurer shall apply to any and all such flights conducted by the insured air carrier, irrespective of whether the aircraft involved in such liability are specifically described in the policy and shall not be subject to any exclusion by virtue of violations, by said carrier, of any applicable safety provisions of the Federal Aviation Act of 1958, as amended, or of any rule, regulation, order or other legally imposed safety requirement by the Federal Aviation Agency.

(iii) Such liability shall not be contingent upon the financial condition, solvency or freedom from bankruptcy of the

insured. The limits of the insurance company's liability for the amounts provided herein shall apply separately to each accident, and any payment under the policy because of any one accident shall not reduce the liability of the insurance company for payment of final judgments resulting from any other accident.

(iv) Within the limits of liability herein provided, the insurance company shall not be relieved from liability by any condition in the policy or any endorsement thereon, or violation thereof by the insured air carrier, other than the exclusions set forth in §295.14(b)(3), *infra*, or such other exclusions as may be individually approved by the Board. Such policy shall not be subject to cancellation, change or suspension, by either party, on less than 30 days' notice, by registered mail, to both the other party to the insurance contract and the Board.

(3) *Authorized exclusions of liability.* Unless other exclusions are individually approved by the Board, such policy or policies may contain only one or more of the following authorized exclusions:

"The insurance afforded under this policy shall not apply to:

(i) Any loss against which the named insured has other valid and collectible insurance, except that the limits of liability provided under this policy shall be excess of the limits provided by such other valid and collectible insurance but in no event exceeding the limits of liability expressed elsewhere in this policy;

(19558, 19559)

(ii) Any loss arising from the ownership, maintenance or use of any type of aircraft not declared to the Insurer in accordance with the terms and conditions of this policy;

19559

(iii) Liability assumed by the Insured under any contract or agreement;

(iv) Bodily injury, sickness, disease, mental anguish or death of any employee of the Insured while engaged in the duties of his employment, or any obligation for which the Insured or any Company as his Insurer may be held liable under any Workmen's Compensation or occupational disease law;

(v) Damage to or destruction of property owned, rented, occupied or used by, or in the care, custody or control of the Insured, or carried in or on any aircraft with respect to which the insurance afforded by this policy applies;

(vi) Personal injuries or death or damage to or destruction of property, caused directly or indirectly, by hostile or warlike action, including action in hindering, combating or defending against an actual, impending or expected attack by any government or sovereign power, *de jure* or *de facto*, or military, naval, or air forces, or by an agent of such government, power, authority or forces; the discharge, explosion, or use of any weapon of war employing atomic fission or

atomic fusion, or radio-active materials, insurrection, rebellion, revolution, civil war or usurped power, including any action in hindering, combating, or defending against such an occurrence; or confiscation by any government or public authority."

(4) *Source of coverage.* Such insurance policy shall be issued by a reputable and financially responsible insurance company which is legally authorized to issue policies of that type in any state, territory or possession of the United States.

(5) *Submission of policy and certificate of insurance.*

(i) Each carrier shall maintain on file with the Board a copy of the policy or policies of insurance and all endorsements thereof and a duly executed certificate of insurance, signed by an authorized representative of the insurer. Whenever any change is made in a previously issued policy, a new certificate of insurance shall be filed with the Board and such certificate shall be accompanied by a copy of any endorsement or endorsements made to such policy.

19560

(ii) Each such certificate shall expressly certify that the insurance company has issued to the insured air carrier a policy or policies which:

(aa) Incorporates the minimum limits of liability set forth in subparagraph (1) of this paragraph,

(bb) Contains the specific terms and conditions of coverage set forth in subparagraph (2) of this paragraph, and

(19560)

(cc) Incorporates only exclusions which have been specifically authorized in subparagraph (3) of this paragraph or individually approved by the Board.

(6) *Publicizing Insurance Coverage.* Any publicizing by the air carrier of the extent of its passenger liability insurance coverage shall include a notation concerning the applicability of the Warsaw Convention and shall specify the amount recoverable under its provisions.

(c) The air carrier shall provide substitute transportation and pay incidental expenses, with respect to delays on return portions of flights, as follows:

(1) *Substitute air transportation.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this subparagraph.

(ii) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other air carrier or foreign air carrier.

(iii) When neither the charter transportation contracted for nor substitute transportation has been performed be-

fore the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually

19561

ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(iv) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this subparagraph, periods of delay caused by the prohibition of flights from the airport of departure because of weather or other operational conditions shall be excluded if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness posted at such airport.

(2) *Incidental expenses.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this subparagraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent,

for the account of each passenger, including infants and children traveling at reduced fares.

(ii) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00 shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled departure time, such payments shall be made in equal installments of $4.00 for each further six-hour period of delay, or any fractional part thereof. *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of subparagraph (e)(1) of this section.

(d) Each and every contract for a transatlantic charter to be operated hereunder shall incorporate the provisions of subparagraphs (b) and (c) above concerning insurance, substitute transportation, and incidental expenses.

19562

(e) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(f) In the case of a round-trip charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round-trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round trips, there shall be no intermingling of passengers and each planeload group shall move as a unit in both directions.

§295.15 *Agent's commission.* The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§295.16 *Prohibition against payments or gratuities.* A carrier shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise. Nothing in this section shall restrict a carrier from offering to each member of the charter group such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., canvas traveling bag or a money exchange computer).

(19562, 19563)

REQUIREMENTS RELATING TO TRAVEL AGENTS

§295.20 *Prohibition against double compensation.* A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§295.21 *Prohibition against payments or gratuities.* A travel agent shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization whether in relation to air transportation or otherwise. Nothing in this section shall restrict a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

19563

§295.22 *Statement of supporting information.* Travel agents shall execute, and furnish to air carriers, Section A of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

§295.30 *Solicitation of charter participants.* As the following terms are defined in §295.2 hereof, members of the charter group may be solicited only from among the *bona fide* members of an organization, club or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public.

§295.31 *Passengers on charter flights.* Only *bona fide* members of the charterer, and their immediate families, may participate as passengers on a charter flight. Where the charterer is engaging round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in §295.14(f) hereof. When more than one round trip is contracted for, intermingling between flights or reforming of plane-load groups shall not be permitted and each plane-load group must move as a unit in both directions.

§295.32 *Participation of immediate families in charter flights.* The immediate family of any *bona fide* member of a charter organization may participate in a charter flight. The immediate family of such member shall be construed to include only the following persons who are living in his household, namely, the spouse, dependent children, and parents of such member.

§295.33 *Charter costs.*

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) children under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be

(19563, 19564)

refunded to the participants in the same ratio as the charges were collected.

19564

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants. Such costs may include a reasonable charge for compensation to members of the charter organization for actual labor and personal expenses incurred by them. Such charge shall not exceed $300 (or $500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall prevent any member of the charter group from accepting such advertising and good will items as are customarily extended to individually-ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in §295.33(c) above, but exclusive of expenses for air transportation or land tours, exceed $750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Post Flight Report" required pursuant to §295.34.

§295.34 *Statements of charges.*

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated indi-

vidual charge for the charter shall clearly identify the portion of the charges to be separately paid for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight the charterer shall complete and supply to each charter participant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. The report shall be submitted in the form of, and contain such information including the above as more fully specified by, the "Transatlantic Charter—Post Flight Report" annexed hereto and made a part of this regulation.

§295.35 *Passenger manifests.*

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

19565

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A *bona fide* member of the chartering organization at the time the organization first gave notice to its members of firm charter plans and will have been a *bona fide* member of the chartering organization for at least six

months prior to the starting flight date. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a *bona fide* member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) *Bona fide* members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participating in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the eastbound and westbound trips must be explained on the manifest.

(d) Attached to such manifest must be a *certification,* signed by a duly authorized representative of the charterer, reading:

"The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a *bona fide* member of the chartering organization at the time the chartering organization first gave notice to its

members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a *bona fide* member of an entity consisting of (a) students and educational staff of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or (5) is a *bona fide* participant in a charter composed of participants in a formal academic study course abroad.

(Signature) ."

19566

§295.36 *Statement of supporting information.* Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

SUBPART B—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

§295.40 *Tariffs to be on file.* The provisions of §295.13 shall apply to charters under this subpart.

§295.41 *Terms of service.*

(a) The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed

in accordance herewith and the contract shall be for the entire capacity of one or more aircraft.

(b) The terms of service delineated in §295.13(b), 14 (b)(c) and (d) shall be applicable in the case of single entity charters.

§295.42 *Commissions paid to travel agents.* No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

SUBPART C—PROVISIONS RELATING TO MIXED CHARTERS

§295.50 *Applicable rules.* The rules set forth in Subpart A hereof shall apply in the case of mixed charters.

SUBPART D—PROCEDURE FOR ADVISORY OPINION ON THE ELIGIBILITY OF A CHARTERER

§295.80 *Advisory opinion.* An air carrier of prospective charterer may request an advisory opinion from the Bureau of Economic Regulation, Civil Aeronautics Board, Washington 25, D. C., regarding the eligibility of the prospective charterer to obtain charter service in accordance with this regulation. The Bureau's opinion will be based on the representations submitted and shall not be binding upon the Board in any proceeding in which the lawfulness of the respective charter may be in issue. Such representations should include as much of the information specified by Section B, Part II, of the Statement of Supporting Information as is available to the person requesting the advisory opinion.

20642

E-20530
E-20531

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served: March 3, 1964

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

SUPPLEMENTAL OPINION AND ORDER

Adopted: February 24, 1964

BY THE BOARD:

On October 8, 1963, the Board reached its decision in the above-entitled proceeding (see Appendix A), and pursuant to section 801 of the Act, submitted this decision to the President of the United States for his approval. By letter dated February 18, 1964, and appropriate notation on the Board's proposed order, the President approved the Board's decision to award the transatlantic charter certificates to Capitol Airways and Saturn Airways, but returned for further evaluation the decision to award such a certificate to Overseas National Airways (ONA). In view of this Presidential action we will proceed to issue appropriate certificates to Capitol and Saturn. We will also issue the revised Part 295 of the Economic Regulations governing transatlantic charter operations as pro-

vided in our opinion submitted to the President. The only matter remaining to be disposed of is that portion of the President's directive returning this proceeding to the Board for further evaluation as to ONA.

With regard to ONA, the President's letter states as follows:

> "I have been advised that subsequent to the adoption of the Board's decision in the *Transatlantic Charter Investigation* (Docket 11908 et al.), Overseas National
>
> **20643**
>
> Airways filed a petition of bankruptcy suspending all operations. Its future would therefore appear to be in doubt.
>
> "In view of the unfavorable impression that might be created abroad by the participation of a financially unstable air carrier in United States flag operations, and because of other implications for the foreign policy of the United States, I am returning the *Transatlantic Charter Investigation* to the Board for further evaluation of this situation."[1]

These observations by the President indicate no disagreement with the Board's findings as to fitness of ONA based upon the evidentiary record, nor any disagreement with the decision to select ONA over other unsuccessful

---

[1] The President's letter also stated, "With respect to the other two carriers recommended for temporary certification by the Board, I approve the Board's decision." On the Board's proposed order accompanying its opinion, the President noted: "APPROVED: as to Capitol Airways and Saturn Airways; returned for further evaluation as to Overseas National Airways, in accordance with my letter to the Board of February 18, 1964."

applicants. Rather, it appears that the President wishes a further evaluation of ONA for the purpose of determining whether any of the developments since the Board's original decision have so changed the qualifications of the carrier as to render it financially unfit. In order to make such a determination as promptly as possible, we will set this matter for an expeditious hearing at a very early date.

In view of the foregoing, IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to Capitol Airways, Inc., and Saturn Airways, Inc.;

20644

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on April 18, 1964;

3. That the record in this proceeding be and it hereby is reopened for further hearing on an expedited basis, to determine whether any developments since the Board's original decision herein have rendered ONA no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for that carrier;

4. That paragraph "3" of Order E-20531, terminating the Board investigation, Docket 11908 *et al.*, be and it hereby is vacated.[2]

---

[2] Upon publication of revised Part 295 in the Federal Register, we will delete the reference to ONA in the preamble to reflect the President's action.

(20644)

5. That this order shall become effective upon the date of its approval by the President of the United States.

BOYD, Chairman, MURPHY, Vice Chairman, GURNEY, MINETTI and GILLILLAND, Members, concurred in the above opinion and order.

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

February 29, 1964

(20645)

20645

Order No. E-20530

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to en-

gage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing,

that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in ac-

cordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on April 18, 1964, and shall terminate five years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of October 8, 1963, insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 8th day of October, 1963.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on February 18, 1964.

(20647)

20647

Order No. E-20530

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to en-

gage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event

the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in ac-

(20648)

cordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on April 18, 1964, and shall terminate five years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of October 8, 1963, insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 8th day of October, 1963.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on February 18, 1964.

20649

Order No. E-20531

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 8th day of October, 1963

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amended regulations of the Board designated Part 295 of the Economic Regulations, which are attached hereto and made a part hereof;

(20649)

2. That said amended regulations shall be effective on April 18, 1964;

3. That the Board investigation, Docket 11908 *et al.*, be and it hereby is terminated.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

20650

Regulation No. ER-400

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations
Revision of Part 295
Effective: April 18, 1964
Adopted: October 8, 1963

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION REVISION OF PART

Present Part 295, as amended, sets out the general requirements governing applications for and operations under special orders to carriers holding certificates of public convenience and necessity for the carriage of property only and property and mail only pursuant to Part 207 of the Economic Regulations and amendments to interim operating certificates of supplemental carriers operating under section 7 of Public Law 87-528, authorizing for periods up to 180 days but terminating not later than September 30 of any year, the performance of pro rata, mixed and/or single entity charter flights for transatlantic passengers.

In its decision in the *Transatlantic Charter Investigation,* Docket 11908 *et al.*, dated October 8, 1963, the Board granted certificates of public convenience and necessity to three supplemental air carriers (Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc.)

20651

under section 401(d)(3) of the Act, for supplemental air transportation of persons and their personal baggage between points in the 48 contiguous states, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand, for a period of five years, subject to the terms, conditions and limitations of this revised Part 295. The revision contained herein implements the determination contained in the aforesaid order by redefining charter flights and specifying the terms, limitations and conditions under which such certificated transatlantic passenger charter operations shall be conducted.

The supplemental order of investigation in the *Transatlantic Charter Investigation*[1] specified that one of the subjects of investigation should be under what terms and conditions, if any, one or more carriers should be certificated to conduct transatlantic passenger charters. The Board stated that it contemplated a full consideration of the rules which should govern such operations, including, but not

20652

limited to, the rules established in Part 295 and that in determining rules to govern the broader and more permanent operations which might be authorized therein, it was patent that the Board should have the benefit of a full evidentiary hearing; the Board invited the applicants and all parties not only to offer any suggestions which they might have with regard to the suitability of the rules of Part 295 for a

[1] Order E-17190, July 18, 1961. This order was published in the Federal Register. (26 F. R. 6752)

long-range program, but also to come forward with any new concepts which they might consider appropriate. The examiner attached to his recommended decision in that proceeding a specific revision of Part 295 based upon the current version, but modified to the extent he deemed called for by the evidence and briefs of the parties. Although the regulation we are reissuing differs in some of its provisions from the regulation recommended by the examiner and/or the parties, all of the provisions were either taken from the existing regulation or Policy Statement No. 17 (Sec. 399.41), or their substance was the subject of intensive examination and argument by the parties. Interested parties have, therefore, been afforded an opportunity to comment on the substance of this regulation in connection with the above-mentioned proceeding. In view of the foregoing circumstances, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest.

Accordingly, the Civil Aeronautics Board hereby reissues Part 295 of the Economic Regulations (14 CFR Part 295), effective April 18, 1964, as follows:

Sec.

295.1 Applicability.
295.2 Definitions.
295.3 Waiver.
295.4 Separability.
295.5 Reporting and record retention.

Subpart A—Provisions Relating to Pro Rata Charters

295.10 Applicability of subpart.

(20653, 20654)

Requirements Relating to Air Carriers

295.11 Solicitation and formation of a chartering group.
295.12 Pre-trip notification.
295.13 Tariffs to be on file.
295.14 Terms of service.
295.15 Agent's commission.
295.16 Prohibition against payments or gratuities.

Requirements Relating to Travel Agents

295.20 Prohibition against double compensation.
295.21 Prohibition against payments or gratuities.
295.22 Statement of supporting information.

Requirements Relating to the Chartering Organization

295.30 Solicitation of charter participants.
295.31 Passengers on charter flights.
295.32 Participation of immediate families in charter flights.
295.33 Charter costs.
295.34 Statements of charges.
295.35 Passenger manifests.
295.36 Statement of supporting information.

20654

Subpart B—Provisions Relating to Single Entity Charters

295.39 Applicability of subpart.
295.40 Tariffs to be on file.
295.41 Terms of service.
295.42 Commissions paid to travel agents.

Subpart C—Provisions Relating to Mixed Charters

295.50 Applicable rules.

Subpart D—Procedure for Advisory Opinion on the Eligibility of a Charterer

295.60 Advisory opinion.

Authority: §§295.1 to 295.60 issued under sec. 204(a), 72 Stat. 743, 49 U. S. C. 1324. Interpret or apply sec. 401 (d)(3) and sec. 401(n); 76 Stat. 143, 144; 49 U. S. C. 1371.

20655

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

§ 295.1 *Applicability.*

This part establishes the terms, conditions, and limitations of transatlantic supplemental air transportation.

§ 295.2 *Definitions.* As used in this part, unless the context otherwise requires—

(a) "Transatlantic supplemental air transportation" means charter flights in air transportation performed pursuant to a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supplemental air transportation of persons and their personal baggage between points within the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

(20655)

(b) "Charter flight" means air transportation performed by a direct air carrier where (1) the entire capacity of one or more aircraft has been engaged for the movement of persons and their personal baggage, on a time, mileage or trip basis:

(i) by a person for his own use (including a direct air carrier or surface carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency); or

(ii) by a representative (or representatives acting jointly) of a group for the use of such group;

or (2) one-half the capacity of an aircraft has been engaged by a person for his own use or by a representative or representatives of a group for the use of such group and the remaining half of the capacity of such aircraft has been engaged by another person for his own use or by a representative or representatives of a second group.

With the consent of the charterer, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

(c) "Pro rata charter" means a charter the cost of which is divided among the passengers transported.

(d) "Single entity charter" means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

(e) "Mixed charter" means a charter the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

(f) "Person" means any individual, firm, association, partnership, or corporation.

(g) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

20656

(h) "Charter group" means that body of individuals who shall actually participate in the charter flight.

(i) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived.

(j) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(k) "*Bona fide* members" means those members of a charter organization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public. Presumptively persons are not *bona fide* members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants

(20656, 20657)

in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

(1) "Solicitation of the general public" means (1) a solicitation going beyond the *bona fide* members of an organization (and their immediate families), such as advertising directed to the general public by radio, television, newspaper, or magazine, or (2) the solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

§ 295.3 *Waiver.*

A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

20657

§ 295.4 *Separability.*

If any provision of this part or the application thereof to any air transportation, person, class of person, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§ 295.5 *Reporting and record retention.*

(a) Fifteen days after the end of each calendar month, each carrier operating pursuant to this part shall file with the Board's Bureau of Economic Regulation a report setting forth the following information pertaining to each charter flight performed during said month pursuant to this part:

(1) Date of trip;

(2) Points served;

(3) Number of round-trip and one-way passengers;

(4) Name of chartering organization;

(5) Description of chartering organization disclosing basis for conclusion that the group is *bona fide* (identify criteria relied upon);

(6) Name of travel agent; and

(7) Construction of tariff charge.

(b) Prior to performing any supplemental air transportation pursuant to this part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof.

(c) Each air carrier operating pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

SUBPART A—PROVISIONS RELATING TO PRO RATA CHARTERS

§ 295.10 *Applicability of this subpart.*

This subpart sets forth the special rules applicable to pro rata charters.

(20657, 20658)

REQUIREMENTS RELATING TO AIR CARRIERS

§ 295.11 *Solicitation and formation of a chartering group.*

A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

20658

§ 295.12 *Pre-trip notification.* Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this regulation, Part 295.* The charter contract shall include a provision that the charterer and any agent thereof, shall only act with regard to the charter in a manner consistent with this regulation and that the charterer shall within due time submit to the carrier such information as specified in §§ 295.34 and 295.35 hereof and submit to each charter participant the information identified in § 295.34. The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§ 295.36 and 295.22, respectively.

§ 295.13 *Tariffs to be on file.*

No air carrier shall perform any supplemental air transportation unless such air carrier shall have on file with

* Copies of this regulation are available by purchase from the Superintendent of Documents, Washington, D. C., 20402. Single copies will be furnished without charge on written request to the Publications Unit, Civil Aeronautics Board, Washington, D. C., 20428.

the Board a currently effective tariff showing all rates, fares, and charges for the use of the entire capacity or one-half the capacity of one or more aircraft in such supplemental air transportation and showing all rules, regulation practices and services in connection with such supplemental air transportation, including eligibility requirements for charter groups not inconsistent with those established in this part.

§ 295.14 *Terms of service.*

(a) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity or for one-half the capacity of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter, *provided* that the carrier shall not charge the charterer

for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(b) Insurance coverage shall be maintained in compliance with the insurance requirements of Part 208 of the Economic Regulations.

(c) The air carrier shall provide substitute transportation and pay incidental expenses, with respect to delays on return portions of flights, as follows:

(20659)

(1) *Substitute air transportation.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this subparagraph.

(ii) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other air carrier or foreign air carrier.

(iii) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(iv) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this subparagraph, periods of delay caused by

the prohibition of flights from the airport of departure because of weather or other operational conditions shall be excluded if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness posted at such airport.

(v) Air carriers may subcontract the performance of transatlantic passenger charter services which they have contracted to perform, only to air carriers authorized by the Board to perform such services.

20660

(2) *Incidental expenses.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this subparagraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares.

(ii) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00

(20660)

shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled departure time, such payments shall be made in equal installments of $4.00 for each further six-hour period of delay, or any fractional part thereof. *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of subparagraph (c)(1) of this section.

(d) Each and every contract for a transatlantic charter to be operated hereunder shall incorporate the provisions of subparagraphs (b) and (c) above concerning insurance, substitute transportation, and incidental expenses.

(e) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(f) In the case of a round-trip charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round trips, there shall be no intermingling of passengers and each

plane-load or one-half plane-load group shall move as a unit in both directions.

20661

§ 295.15 *Agent's commission.* The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 295.16 *Prohibition against payments or gratuities.* A carrier shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise. Nothing in this section shall preclude a carrier from paying a commission (within the limits of section 295.15) to a member of a chartering organization if such member is its agent, or restrict a carrier from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, canvas traveling bag or a money exchange computer).

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 295.20 *Prohibition against double compensation.* A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§ 295.21 *Prohibition against payments or gratuities.* A travel agent shall make no payments nor extend gratuities

of any kind, directly or indirectly, to any member of a chartering organization whether in relation to air transportation or otherwise. Nothing in this section shall restrict a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, a canvas traveling bag or a money exchange computer).

§ 295.22 *Statement of supporting information.* Travel agents shall execute, and furnish to air carriers, Section A of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

§ 295.30 *Solicitation of charter participants.* As the following terms are defined in § 295.2 hereof, members of the charter group may be solicited only from among the *bona fide* members of an organization, club or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public.

§ 295.31 *Passengers on charter flights.* Only *bona fide* members of the charterer, and their immediate families, may participate as passengers on a charter flight. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.*

* Where the charter is based on employment in one entity or student status at a college, records of the corporation, agency or college will suffice to meet this requirement.

Where the charterer is engaging round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in § 295.14(f) hereof. When more than one round trip is contracted for, intermingling between flights or reforming of plane-load or one-half plane-load groups shall not be permitted and each such group must move as a unit in both directions.

§ 295.32 *Participation of immediate families in charter flights.* The immediate family of any *bona fide* member of a charter organization may participate in a charter flight.

§ 295.33 *Charter costs.*

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) children under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants. Such costs may include a reasonable charge for compensa-

tion to members of the charter organization for actual labor and personal expenses incurred by them. Such

20663

charge shall not exceed $300 (or $500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall preclude a member of a chartering organization who is the carrier's agent from receiving a commission from the carrier (within the limits of section 295.15), or prevent any member of the charter group from accepting such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in § 295.33(c) above, but exclusive of expenses for air transportation or land tours, exceed $750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Post Flight Report" required pursuant to § 295.34.

§ 295.34 *Statements of charges.*

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated in-

dividual charge for the charter shall clearly identify the portion of the charges to be separately paid for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight the charterer shall complete and supply to each charter participant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. The report shall be submitted in the form of, and contain such information including the above as more fully specified by, the "Transatlantic Charter—Post Flight Report" annexed hereto and made a part of this regulation.

§ 295.35 *Passenger manifests.*

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

20664

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A *bona fide* member of the chartering organization at the time the organization first gave notice to its members of firm charter plans and will have been a *bona fide*

member of the chartering organization for at least six months prior to the starting flight date. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a *bona fide* member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) *Bona fide* members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the eastbound and westbound trips must be explained on the manifest.

(d) Attached to such manifest must be a *certification,* signed by a duly authorized representative of the charterer, reading:

"The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a *bona fide* member of the chartering organization at the time

the chartering organization first gave notice to its members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a *bona fide* member of an entity consisting of (a) students and educational staff of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such per-

20665

son's household, or (5) is a *bona fide* participant in a charter composed of participants in a formal academic study course abroad.

(Signature) ."

---

§ 295.36 *Statement of supporting information.* Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

SUBPART B—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

§ 295.39 *Applicability of subpart.* This subpart sets forth the special rules applicable to single entity charters.

§ 295.40 *Tariffs to be on file.* The provisions of § 295.13 shall apply to charters under this subpart.

(20665, 20666)

§ 295.41 *Terms of service.*

(a) The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed in accordance herewith and the contract shall be for the entire capacity or one-half the capacity of one or more aircraft.

(b) The terms of service prescribed in § 295.14(b), (c) and (d) shall be applicable in the case of single entity charters.

§ 295.42 *Commissions paid to travel agents.* No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

SUBPART C—PROVISIONS RELATING TO MIXED CHARTERS

§ 295.50 *Applicable rules.* The rules set forth in Subpart A hereof shall apply in the case of mixed charters.

SUBPART D—PROCEDURE FOR ADVISORY OPINION ON THE ELIGIBILITY OF A CHARTERER

§ 295.60 *Advisory opinion.* An air carrier or prospective charterer may request an advisory opinion from the Bureau of Economic Regulation, Civil Aeronautics Board, Washington, D. C. 20428, regarding the eligibility of the prospec-

tive charterer to obtain charter service in accordance with this regulation. The Bureau's opinion will be based on the

representations submitted and shall not be binding upon the Board in any proceeding in which the lawfulness of the respective charter may be in issue. Such representations should include as much of the information specified by Section B, Part II, of the Statement of Supporting Information as is available to the person requesting the advisory opinion.

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Members GURNEY and GILLILLAND dissented.

(20667)

20667

STATEMENT OF SUPPORTING INFORMATION *

PART I—To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: .....
2. Commencement date(s) of proposed flight(s):
   (a) Going .....
   (b) Returning .....
3. Points to be included in proposed flight(s):
   (a) From ..... to .....
   (b) Returning from ..... to .....
   (c) Other stops required by charterer: .....
   (d) Technical stops required by carrier: .....
   (e) Planned routing: .....
   .....
4. (a) Type of aircraft to be used: .....
   (b) Seating capacity: .....
   (c) Number of persons to be transported: .....
5. (a) Total charter price: .....

* This must be retained by the air carrier for two years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

(b) Does the charter price conform to tariff on file with the Board? .....

(c) If pro rata or mixed charter, explain construction of charter price in relation to tariff on file with the Board (In case of mileage tariff, show mileage for each segment involved and indicate whether segment is live or ferry). .....

.....

20668

6. (a) Has the carrier paid, or does it contemplate the payment of any commissions, direct or indirect; in connection with the proposed flight? Yes ☐ No ☐

(b) If "yes," give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation.

.....

.....

7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes ☐ No ☐

(b) If "yes," describe services or functions: .....

.....

.....

8. Name and address of charterer: .....

(20668, 20669)

9. If charter is single entity, indicate purpose of flight:

.....

10. On what date was the charter contract executed?

.....

11. If the charter is pro rata, has a copy of Part 295 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes ☐ No ☐

20669

PART II—To be completed for pro rata or mixed charters only:

Section A—To be supplied by travel agent, or, where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements).

1. What specific services have been or will be provided by agent to charterer on a group basis? .....

.....

.....

2. What specific services have been or will be provided by agent to individual participants in the proposed charter? .....

.....

.....

3. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organiza-

tion in relation either to the proposed charter flight or any land tour? Yes ☐ No ☐

4. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes ☐ No ☐ If answer is "yes," explain:

.....

.....

Verification[1]

STATE OF .....)
COUNTY OF .....) SS:

....., being duly sworn,
Name
deposes and says that to the best of his knowledge and belief all the information presented in Part II, Section A of this Statement is true and correct.

.....
Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Sworn to before me this day,
the ..... of ....., 19

20670

.....
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

(20670)

Warranty

I, ..., represent and
Name
warrant that I have acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.

.....
Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Section B—To be supplied by charterer:

1. Description of chartering organization, including its objectives and purposes: .....
.....
.....

2. What activities are sponsored by the chartering organization? .....
.....

3. When was the organization founded? .....

4. Qualification or requirements for membership in organization and membership fee, if any: .....

.....

5. Has there been any reference to prospective charter flights in soliciting new members for the chartering organization? Yes ☐ No ☐

20671

6. If total membership in the chartering organization is less than 1,000, submit list showing names and addresses of members in good standing.[2] If total membership in the chartering organization is 1,000 or more, state where a list of members is available for inspection.

.....

.....

7. Attach list of prospective passengers, showing for each: Name, address, and whether a member of chartering organization or relationship to a member of chartering group. (Note: This is a list of prospective passengers and does not necessarily have to represent the passengers actually carried.)

8. Purpose of trip: .....

.....

9. What are requirements for participation in charter?

.....

10. How were prospective participants for charter solicited (attach any solicitation material?) .....

.....

11. Will there be any participants in the charter flight *other than* (1) members of the chartering organization

(20671, 20672)

or (2) spouse, dependent children, and parents of a member of the chartering group, *residing in the same household with the member?* Yes ☐ No ☐

12. Will there be any members of the chartering organization participating in the charter who will have been members of the organization for a period of less than six months prior to flight date?[2] Yes ☐ No ☐ If answer is "yes," give names of participants who will not have been members for six months and justify (see §295.2 (k)):

.....

.....

.....

20672

13. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in Part II, Section A, submit name, address, remuneration and scope of activity:

.....

.....

14. Estimated receipts:

..... × ..... = $.....

(Pro rata charge) (no. of passengers) (Estimated receipts from charter)

Estimated receipts from other sources, if any: .....

Explain: .....

....

(a) Total receipts $

Estimated expenditures, including aircraft charter (separately itemize air transportation, land tour, and administrative expenses):

Item	*Amount*	*Payable To*

(b) Total expenditures $

Explain any difference between (a) and (b): .....

.....

15. Are any of the expenses included in Item 14, above, to be paid to any members of the chartering organization? Yes ☐ No ☐ If "yes," state how much, to whom and for what services:

.....

.....

20673

16. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip? Yes ☐ No ☐ If "yes," explain fully:

.....

.....

17. Will any person in the group (except children under two years) be transported without charge?
Yes ☐ No ☐

18. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge

(20673, 20674)

is made for children under twelve years old?
Yes ☐ No ☐

19. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction:

.....

.....

20. If more than one round trip is contracted for, will each group move as a unit in both directions? Yes ☐ No ☐

.....

21. If transatlantic charters have been performed for organization during past 5 years, give dates and name of carrier performing charters:

.....

.....

22. Has a copy of Part 295, "Transatlantic Supplemental Air Transportation," Economic Regulations of the Civil Aeronautics Board been received by the charterer? Yes ☐ No ☐

20674

Verification of Charterer[1]

STATE OF .....)
COUNTY OF .....) ss:

..... and
(name)

.....
(name)

being duly sworn, hereby separately depose and say that to the best of the knowledge and belief of each of them all

the information in Part II, Section B, of this Statement is true and correct.

.....	.....
(Signature and title of officer—This should be the chief officer of the chartering organization except in the case of a school charter, in which case the verification *must* be by a school official not directly involved in charter.)	(Signature—person within organization in charge of charter arrangements.)
Sworn to before me this day, the ..... of ....., 19	Sworn to before me this day, the ..... of ....., 19
.....	.....
(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)	(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)
(SEAL)	(SEAL)

20675

Warranty of Charterer

I, ... and
(name)

.....
(name)

represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully

(20675)

and specifically explained in Part II, Section B), and will act with regard to such operation, in a manner consistent with Part 295 of the Board's Economic Regulations.

.....	.....
(Signature and title of officer—This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty *must* be by a school official not directly involved in charter.)	(Signature—person within organization in charge of charter arrangements.)

Verification of Employer[1]

(To be furnished where eligibility to participate in charter is dependent upon employment by a particular entity.)

STATE OF .....)
COUNTY OF .....) SS:

....., being duly sworn,
(name)

deposes and says that to the best of his knowledge and belief solicitation for this charter has been confined to persons employed by .....,
(name of employer entity)

or persons in the immediate families of such employees.

.....
(Signature and title of authorized official of employer)

Sworn to before me this day, the ..... of ....., 19

.....

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

20676

Warranty of Air Carrier

To the best of my knowledge and belief all the information presented in this statement, including but not limited to, those parts verified by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.[3]

.....

(Signature and title of authorized official of air carrier)

---

[1] Whoever, having taken an oath before a competent — person — that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. *Title 18, U. S. C., §1621.*

[2] Not applicable to college campus or study-group charters, nor to charters limited to employees of a single Government agency, industrial plant or mercantile company.

[3] Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to

(20677)

20677

TRANSATLANTIC CHARTER POST FLIGHT REPORT

Instructions:

The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight. A report in this form shall also be furnished each charter participant by the charterer within 15 days after completion of each one-way or round-trip charter flight.

1. Name of carrier: .....

2. Name of chartering organization: .....
.....

3. Analysis of charterer's receipts:

(a) ..... × ..... = ...
No. of one-way psgrs. | Charge per psgr.[1] (including amounts later refunded)

(b) ..... × ..... = ...
No. of round-trip psgrs. | Charge per psgr.[1] (including amounts later refunded)

(c) Receipts from other sources (explain) = ...

(d) Total receipts [(a) + (b) + (c)] = ...

---

keep or preserve accounts, records and memoranda in the form and manner prescribed by the Board, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. *Title 49, U. S. C., §1472.*

4. Analysis of charterer's expenditures:

Item of expenditure[2]	*Paid to*[3]	*Amount*
	Total[4]	

20678

Verification[1]

STATE OF .....)
COUNTY OF .....) SS:

I, ..., being duly sworn, hereby depose and say that this report has been prepared by me or under my direction, that I have carefully examined it and that to the best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

.....
(Signature of person in charge of charter arrangements)

Sworn to before me this day,
the ..... of ....., 19

.....
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

[1] If charter cost was not divided equally among *all* participants actually transported, indicate clearly the individual amounts collected and the number of passengers paying each such amount.

[2] As a separate item there should be listed here a total of all the amounts refunded to the charter participants; also list separately

(20679)

20679

Appendix A

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

Decided: October 8, 1963

Certificates issued to Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc., for supplemental air transportation of persons and their personal baggage between points in the 48 contiguous States on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia, as far east

---

air transportation, land tour, and administrative expenses, and break down administrative expenses so as to show such items as postage and printing, and to show compensation for labor and personal expenses paid to any member of chartering organization.

[3] Disclose any relationship to chartering organization.

[4] If this item does not agree with item 3(d), submit an explanatory statement as to the reasons therefor. If the total expenditures (including among other items compensation to members of the chartering organization but exclusive of expenses for air transportation or land tours) exceed $750 per round trip, such expenditures shall be fully supported by vouchers submitted to and retained by the direct air carrier operating the charter. Such vouchers must cover all expenditures made on behalf of the chartering group including any expenditures for banquets, gifts, local transit, etc.

as (and including) India, on the other hand, for a five-year period, subject to the terms, conditions, and limitations of Part 295.

Part 295 of the Economic Regulations revised and reissued (1) to redefine "charter flight" to allow the engagement by the chartering organization of one-half the capacity of an aircraft on a time, mileage, or trip basis, (2) to eliminate the 20,000 membership limit on *bona fide* chartering organizations, (3) to remove existing restrictions on travel agents assisting in the formation of charter groups, handling the sale of air transportation to members of the group, engaging in the administration of a charter flight, soliciting individuals for land tours and receiving a commission for a charter flight or land tour if the agent is a member of the chartering organization, (4) to require the chartering organization to maintain central membership lists containing the date each member joined the organization, and to make such lists available to both the carrier and the Board, and (5) to incorporate the provisions of Sec. 399.41 with respect to liability insurance, substitute air transportation and incidental expenses on the return portion of the charter flight.

APPEARANCES:

Same as in the Recommended Decision and, in addition, the following:

Louis S. Papa for Airline Transport Carriers, Inc. d/b/a California Hawaiian Airlines.

David I. Shapiro for U. S. Overseas Airlines.

Leo M. Hydeman for Seaboard World Airlines.

20680

OPINION

By Boyd, Chairman:

This proceeding was instituted by the Board to determine whether the public convenience and necessity require the certification of one or more air carriers to conduct transatlantic passenger charters between points within the 48 contiguous states, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as (and including) India, on the other hand, and, if so, which carrier or carriers should be selected and under what terms and conditions, including the suitability of Part 295 for a long-range charter program.[1] Proposals for changes in Part 295 to permit (1) charters by travel agents for all-expense group tours and (2) "split charters" to so-called "affinity" and "spontaneous" groups, were specifically declared to be within the issues of the proceeding.[2]

Nine carriers holding some form of authority for supplemental operations,[3] one whose authority for such operations

---

[1] Orders E-16023, November 14, 1960, and E-17190, July 18, 1961.

[2] Orders E-17607, October 18, 1961, and E-18121, March 19, 1962.

[3] Capitol Airways, Inc. (Capitol), Overseas National Airways, Inc., (ONA), Saturn Airways, Inc. (Saturn), World Airways, Inc. (World), Modern Air Transport, Inc. (Modern), U. S. Overseas Airlines, Inc. (USOA), Quaker City Airways, Inc. d/b/a Admiral Airways, Inc. (Quaker City), Airline Transport Carriers, Inc. d/b/a California Hawaiian Airlines (ATC), and Paramount Airlines, Inc. (Paramount).

had been revoked,[4] and three all-cargo carriers,[5] prosecuted their applications for certificates.[6]

20681

After due notice a public hearing was held before Examiner James S. Keith, who thereafter issued his recommended decision. Subsequent to the close of the hearing, but prior to the time the examiner rendered his decision, Public Law 87-528, the so-called supplemental air carrier legislation, was enacted and became effective July 10, 1962.[7] The examiner found that transatlantic passenger charter services by United States carriers other than Pan American and TWA would serve a useful public purpose responsive to a public need, and recommended that such services be continued. He recommended that six carriers other

[4] Great Lakes Airlines, Inc. (Great Lakes).

[5] The Flying Tiger Line Inc. (Flying Tiger), Riddle Airlines, Inc. (Riddle), and Seaboard World Airlines, Inc. (Seaboard).

[6] Of the various applications consolidated in this proceeding (see Orders E-16023, E-17190 and E-17607) all except the thirteen indicated were withdrawn or dismissed for lack of prosecution, E-17607, October 18, 1961, E-17725, November 15, 1961, E-17865, December 22, 1961, E-17938, January 18, 1962, and E-18319, May 9, 1962.

[7] In a series of decisions dated October 5, 1962, subsequent to the examiner's recommended decision, ATC, Quaker City and Paramount were denied interim authority under section 7 of P. L. 87-528 to engage in "supplemental air transportation" as defined in said law. Their applications under the newly added section 401 (d) (3) of the Act for more permanent authority to engage in such transportation, together with like applications of Capitol, ONA, Saturn, World, Modern and USOA, all of whom were granted interim certificates under section 7, are pending. Great Lakes was not an applicant for an interim certificate and did not file for a section 401 (d) (3) certificate. The nine carriers who are applicants for 401 (d) (3) certificates are hereinafter sometimes collectively referred to as "the supplemental carriers."

than Pan American and TWA be authorized to engage in transatlantic passenger charter service; that the all-cargo carrier applicants be permitted to continue their transatlantic passenger charter services under a revised Part 207, and their applications for certificates to conduct such

20682

services be dismissed;[8] that Capitol, Saturn and ONA be given temporary certification to September 30, 1963, under the newly added section 401(d)(3) of the Act to engage in transatlantic supplemental air transportation pending final decision in the present proceeding; that the other supplemental carriers who are applicants not be so temporarily certificated; that final decision on the applications of all the supplemental carriers be deferred pending decision on their applications under section 401(d)(3); that the application of Great Lakes be denied; that the concept of charter not be expanded to include either all-expense tour charters by travel agents or split charters and that Part 295 be otherwise revised in accordance with a draft attached to the recommended decision.

---

[8] The examiner recognized that amendment of Part 207 was not in issue, but recommended, in view of the unusual situation created by the enactment of P. L. 87-528 (having reference to section 401(e)(6), the so-called "Engle Amendment," added to the Federal Aviation Act as part of such legislation), that the Board initiate steps to revise Part 207 so as to remove the existing restrictions therein on the certificated all-cargo carriers and empower them to engage in off-route passenger charters under terms, conditions, and limitations corresponding with those set forth in a revised Part 295 as recommended by him. The examiner further noted that since, under such a revised Part 207, Slick Airways, Inc. might decide to engage in transatlantic passenger charters, thus making four all-cargo carrier participants, there would be need for only two transatlantic charter carriers to be certificated from the class of supplemental carriers.

Exceptions to the recommended decision and briefs to the Board have been filed.[9] The Board has heard oral argument and the case stands submitted for decision.

Upon consideration of the entire record and the contentions of parties, we find that we are in agreement with the examiner's conclusions that transatlantic charter services by carriers other than the certificated passenger airlines would serve a useful purpose and would not adversely affect the operations of TWA and Pan American or otherwise be contrary to the public interest. However, we do not agree that the transatlantic charter market requires the services of six carriers, or that the public interest requires that the all-

cargo applicants be empowered to continue transatlantic charter services. Rather, we are of the opinion that the certification of the three supplemental air carriers selected by the examiner, Capitol, Saturn, and ONA, for a period of five years will fill the demonstrated needs of the transatlantic charter market. We have also concluded, contrary to the examiner, that the definition of charter in Part 295 of the Economic Regulations should be amended to allow the carriage of two charter groups on any one aircraft, rather than restricting the carriers to full plane-load charters. We agree with the other revisions of Part 295 recommended by the

[9] Exceptions and briefs to the Board were filed by Pan American, TWA, American Society of Travel Agents (ASTA), Flying Tiger, Riddle, Seaboard, Great Lakes, Bureau Counsel, Capitol, ONA, Saturn, World, Modern and Quaker City. We hereby grant the motions of Modern and Quaker City—to which no answers were filed—requesting acceptance of their exceptions which were filed one day late. USOA filed exceptions and a letter adopting its brief to the examiner in lieu of a brief to the Board. ATC and Paramount filed exceptions, but no briefs to the Board.

examiner, except that, in addition thereto, we will require the maintenance by chartering organizations of central membership lists, containing the date each member joined the organization, which list should be available to both the carriers and the Board. Except as modified herein, we adopt as our own the findings and conclusions of the examiner in his recommended decision which is attached hereto as Appendix A.

Necessity for Certification

The examiner has reviewed the characteristics and growth pattern of the transatlantic charter market which led him to the conclusion that continuation of transatlantic charter service by carriers other than the certificated route passenger carriers is required, and we need not repeat those details here. Historically, the Board has sought to encourage the development of the large mass international travel market in the United States without undue diversion from the regular route carriers. In furtherance of this objective, the Board has in the past authorized, by exemption procedures,

a variety of supplemental and all-cargo operators[10] to conduct transatlantic charter flights during the peak summer season. Such authorizations have had two major effects. Because of the substantial difference in price between carriage on a pro rata charter and on individually ticketed service, transatlantic air transportation was made available to and used by a part of the potential market which otherwise could not have afforded transatlantic air travel; in turn, the

[10] Hereinafter referred to as the "Part 295 operators" or "Part 295 carriers."

presence of this group of operators stimulated the IATA carriers to expand their own charter programs.[11] Secondly, the availability of charters was increased during the peak summer season, when the U. S. flag carriers, because it is also the peak season for individually ticketed travel, could not satisfy the demands of the transatlantic charter market. The extent of participation in the transatlantic charter market which the Part 295 carriers have achieved indicates the existence of a continuing need for such low-cost services,[12] and we think it now appropriate to designate a number of these carriers to perform such services on a certificated basis.

The gist of the scheduled route carriers' case in opposition to certification is that the IATA group fares for the North Atlantic market, instituted in 1962, have now removed any need for certificated charter carriers, since group

20685

fares make available to the public air transportation at fares only slightly higher than the cost of a pro rata charter, on scheduled services using jet equipment and with a wide choice of dates and departure time. It is their position that the availability of group fares will substantially diminish the transatlantic charter market and that the remaining demand for charters can be adequately met by the IATA car-

[11] Until the Board authorized the entry of such carriers into the charter market, it was virtually impossible for chartering groups to obtain charters during the peak season.

[12] In 1962, 11.4 percent of transatlantic passengers traveled on charter; Part 295 carriers carried 26 percent of them, or 48,827 passengers, while U. S. certificated route carriers carried 17,791 or 10 percent. The remaining charter traffic was carried by foreign air carriers.

riers. However, as the examiner pointed out, certain aspects of group fares prevent them from becoming a replacement for charters. Group fares on jet aircraft, which carry the largest part of group fare passengers, are sufficiently higher than pro rata charter fares (about $55) to make a substantial difference for family groups, which make up a significant part of charter travel. Furthermore, during the peak summer season, group fares are not available for weekend travel,[13] a restriction which the evidence indicates, renders group fare travel less attractive to many groups. Additionally, group fares are not available for travel from or to off-group points and off-route groups who wish to utilize such fares must undergo the inconvenience of a change in plane. The group fare discount itself is applicable only to transatlantic mileage and thus passengers from on-line points other than New York and Boston would not receive the benefit of the group fare discount for their entire journey.

20686

That the advent of group fares has not eliminated the demand or need for transatlantic charter service is demonstrated by the fact that in 1962, in spite of the fact that group fares were in effect for the summer season, transatlantic charters increased by almost 10 percent over the previous year, when group fares were not in effect. Charter traffic carried by the Part 295 carriers alone increased by more than 10,000 passengers. The charters performed

[13] Under the 1963 IATA agreement, group fares would also be unavailable during the last week in June and the first week in July eastbound and the last week in August and first week in September westbound, the peak travel weeks.

by Pan American and TWA themselves decreased from 293 in 1961 to 202 in 1962, while the Part 295 carriers increased from 371 to 474 one-way charters.[14] This experience in the 1962 season refutes the certificated route carriers' contention that the charter market remaining after the advent of group fares can be served by the IATA carriers alone. The argument is made, however, that the 1962 charter statistics are not an accurate indication of the effect group fares will have on the future charter market, because the group fare resolution was not adopted until February 1962, long after many charterers had already made firm travel plans, and not approved by the Board until mid-April, too late to allow adequate 1962 promotion and to allow group development by the potential traveler. However, we do not think that the lateness of group fare approval sufficiently accounts for the substantial increase in transatlantic charter traffic in 1962,[15] particularly in view

of the various drawbacks of group fare travel *vis-a-vis* charter travel noted by the examiner.

Nor does the record support the route carriers' assertion that the IATA carriers alone can satisfy the demands of the transatlantic charter market. That assertion is, of course, predicated on the assumption that the charter market will be considerably diminished by the impact of group fares, which assumption has not been proven true to date.

---

[14] Foreign air carriers performed 1,113 one-way charters in 1962 as compared with 1,057 in 1961.

[15] 1962 economy class transatlantic travel also showed a great increase—47 percent—over 1961, and accounted for 81.3 percent of transatlantic passengers, facts which may well be a reflection of the effect of group fares on the market.

The record indicates that the scheduled route carriers' interest lies, understandably, in switching prospective charters to group fares. If successful, it would seem unlikely that such carriers would retain the equipment and interest necessary to meet the demands of the charter market. In 1962, charters performed by the U. S. certificated carriers declined to 202 (of which TWA performed only 5) from the 293 performed in 1961; they carried some 8,000 less passengers in 1962, and their share of the charter market declined from 16 percent to 10 percent. These figures hardly indicate an active interest in charter traffic. Furthermore, whatever the impact of group fares on the charter market, the fact that the IATA carriers may have unused capacity over a whole season does not mean that they could meet the entire need for charter service. The transatlantic charter market is characterized by brief but intense periods of demand, which coincide with the peak periods for scheduled transatlantic traffic. Thus, ability to serve the market at issue depends not merely on total seats available over the

season, but on availability of sufficient equipment and personnel at the times when chartering organizations wish to travel. The record is, we find, barren of evidence that Pan American and TWA can, and will, by themselves meet the peculiar demands of the existing and future transatlantic charter market.

We believe, moreover, that the conduct of charter services by a group of certificated specialists should be of substantial benefit in maintaining and/or increasing low cost services in the transatlantic market. The adoption of the IATA group fares was, in some measure at least, instigated by

the availability of transatlantic charters by Part 295 carriers, and their continuation is dependent upon the concerted action of the IATA carriers. The certification of transatlantic charter specialists should not only provide a stimulus to the IATA carriers to develop a fare structure directed at developing a mass market; such certification will help to assure the continued provision of low cost air transportation in the seasonal transatlantic market, whatever course scheduled individually ticketed fares should take.

We are not convinced that the certification of carriers to perform transatlantic charter services will result in any significant diversion of traffic from the U. S. flag carriers.

20689

The latter carriers impliedly conceded that the charter operations of the Part 295 carriers were not in any marked degree diversionary before the adoption of the IATA group fares, as they carried traffic that would otherwise not have traveled except for the low cost of the charter and Pan American and TWA were unable to meet the demand for such charters with their own equipment. Since the adoption of group fares, they argue, any Part 295 charter passenger must now be diverted from their own scheduled services at such group fares or from their own charter services. However, as we have noted *supra,* in view of the drawbacks of group fares for certain traffic, the remaining price differential, and the probable inability of the route carriers to fill the existing demand for charters, charter services by other than the scheduled route carriers should continue to be largely nondiversionary.[16] It is notable that

[16] The diversionary effect of the authorization of split charters is discussed *infra.*

in 1962 when both IATA group fares and charters by both IATA and Part 295 carriers were available, economy fare passengers (of which group fare passengers are a part) increased far more than any kind of charter passengers. In any case, even if Pan American and TWA were able themselves to carry all the transatlantic passengers presently handled by all of the applicants herein, the amount of traffic lost to them by the presence of these Part 295 carriers in the market has not been shown to be of such magnitude

as to affect their financial position. In 1962, when the charter traffic carried by the Part 295 operators had increased some 31 percent over the previous year, such operators still carried only 3 percent of the total transatlantic passenger traffic. While it is argued that the financial posture of Pan American and TWA is such that any diversion would be harmful,[17] we require some showing beyond general argument, of substantial damage from such operations before depriving the public of needed low-cost services. Accordingly, in view of all of the foregoing, we agree with the examiner that the public convenience and necessity require the authorization of one or more of the applicants herein to engage in transatlantic charter service.

Selection of Carriers

Having determined the need for certification of one or more of the applicants herein, the question arises as to which applicant or applicants should be selected. The examiner recommended that six of the carrier applicants be

[17] The improvement in the financial and traffic position of Pan American and TWA in 1962 is noted *infra*.

permitted to conduct transatlantic charter services. This conclusion appears to have rested primarily on his belief that such services should be an incidental activity of the chosen carriers rather than an operation conducted by specialists. Since an average of six to eight carriers have his-

torically handled Part 295 charters, with six carrying all but an inconsequential part of the business, he found that six carriers could adequately serve that portion of the transatlantic charter market previously served by the Part 295 carriers. He rejected the Bureau's position that only three carriers should be authorized on the grounds that (1) in view of the noncompetitive nature of the services to be authorized herein, there would be no need for strong charter competitors as urged by the Bureau, and (2) the uncertainties as to the ability of any carrier to obtain regularly the westbound cargo charters or military contracts needed for profitable operations to offset the directional imbalance of the passenger charter market could materially reduce the transatlantic charter services if only three carriers were authorized. The authorization of a larger number of carriers would, he found, minimize this situation and guarantee a more constant level of service. He then determined that the all-cargo carriers should be permitted to continue their transatlantic charter operations, not by certification herein, but by an appropriate regulation, (*i.e.*, amendment of Part 207) since these carriers now possess the statutory right under section 401(e)(6) of the Act to engage in off-route passenger charters.

As to the remaining applicants, the examiner recommended that Capitol, Saturn and ONA, the only supplementals with transatlantic charter contracts for 1962, be permitted to continue temporarily their activities in this area pending final decision in this case, which, he stated, should be deferred until the Board has determined the scope of other supplemental air services which it will authorize the applicants[18] to perform pursuant to their pending applications for permanent supplemental authority under section 401(d)(3) of the Act.

In our judgment, contrary to the examiner, the number of applicants to be authorized herein should be sufficiently restricted so as to afford the carriers selected the greatest possible opportunity to conduct profitable operations consistent with the needs of the traveling public for transatlantic charter services. Otherwise, it appears unlikely that the selected applicants will be able to make the investment in personnel and equipment necessary to perform such operations adequately. The proper conduct of transatlantic charter operations requires experienced personnel, and such personnel, and the expertise that goes with it, are more likely to be developed by carriers with a continuing interest and identity in the market, in contrast to the sporadic operations which have characterized the Part 295 carriers in the past. Additionally, the carriers selected will need to acquire

[18] Excepting Great Lakes, which is not an applicant for a certificate under section 401(d)(3). Lacking any other air carrier authority, or the possibility thereof, the examiner would deny Great Lakes' application outright.

jet equipment if they are to maintain their competitive position *vis-a-vis* the IATA carriers, and to continue participation in military charter business,[19] which, for most of the applicants, constitutes an important source of revenue. If each share of the market is diluted too much by the authorization of a large number of applicants, the financing of such equipment would be exceedingly difficult. Furthermore, historically speaking, the *three* most active carriers, rather than six, have operated the great majority of Part 295 charters; in the period from 1957 through 1962, three carriers performed an overall average of 83 percent of the Part 295 services.

On the other hand, as the examiner has pointed out, the transatlantic charter market is highly seasonal, marked by brief but intense periods of demand; it also has a directional imbalance. In these circumstances no single applicant herein would have the equipment and personnel to meet the demands of this market and still be able to conduct other services; nor could any carrier survive on this business alone. Clearly, the transatlantic charter market cannot be adequately served by only one carrier.

Accordingly, we are of the opinion that the requirements of the transatlantic charter market will be adequately met by the certification of three carriers to perform such services.

We further conclude that the carriers certificated for transatlantic charter service should be selected from among

[19] As of fiscal 1964, the Department of Defense policy will be to use turbine-powered equipment exclusively for MATS movements, except in areas where economically or operationally infeasible.

the supplemental air carriers rather than the all-cargo carriers. The examiner, as we have heretofore noted, gave the cargo carriers the primary position among the applicants, by reason of their historical interest in the market, their greater stability and market identification, need for charter revenues and the fact that they now possess a statutory right to conduct off-route charters under new section 401(e)(6) of the Act, the so-called Engle Amendment, contained in P. L. 87-528.

At the outset, we wish to make clear that in our view it was not the Congressional intent in the Engle Amendment to give the all-cargo carriers any favored position with respect to transatlantic passenger charters. On the contrary, the House Conference Committee report shows that the purpose of the amendment was to put authority for the all-cargo carriers to conduct passenger charters,[20] if granted by the Board, on a statutory basis, rather than under a strained interpretation of the Board's exemption powers. Thus the report stated (108 Congressional Record, pp. 11242-3):

> "... the committee of conference wishes to state that it does not intend that this amendment be interpreted as a directive that the Board should necessarily grant the cargo carriers that either any greater or lesser authority than the Board has, in practice, given them under section 416. The scope of such authority is a matter for the Board to determine. The intention is only

[20] The Board has since construed *all* passenger charters conducted by all-cargo carriers as off-route. Regulation ER-375, March 26, 1963.

to insist that the Board act under specific statutory authority and not under a strained interpretation of a provision not contemplated by Congress. This amendment will permit the Board to authorize cargo carriers to engage in passenger charter operations to the extent that it may find, from time to time, that the public interest so requires."

20695

Although we are not required by anything in the Act to give first consideration to the all-cargo carriers for transatlantic charter authorization, we are aware that those carriers have had historical participation in the market, greater market identification and stability than the supplementals, and that transatlantic charter revenues have been of benefit to them in supporting their scheduled operations.

The historical interest in the market is almost solely that of one carrier, Flying Tiger, rather than the cargo carriers as a class. Of the 720 transatlantic charters performed by the all-cargo carriers in the period 1957-1962, 472 were operated by Flying Tiger, 191 by Riddle, 19 by Seaboard and 38 by Slick, which is not an applicant herein. Even Flying Tiger's participation has been somewhat erratic; in 1959 and 1960, it operated only 12 and 21 charters, respectively.

We are influenced to select supplementals exclusively, rather than all-cargo carriers, by the fact that P. L. 87-528 has restricted the field of activity for supplemental carriers, except for the short interim period provided by section 7 of that law, to charter operations. Thus, so long as national policy, as expressed in the recent legislation, favors the continuation of supplemental carriers as a class, we be-

lieve that such carriers should be given the opportunity to develop one of the few civilian markets left to them. In addition to assisting the chosen supplementals to achieve economically sound operation, the certification of such carriers would, we think, better serve the public interest than the selection of the all-cargo carriers, or division of the market between them, in that the interest of the supplementals in the development of the transatlantic charter market would necessarily be greater, since their field of activity is now confined to charter operations.

We recognize the validity of the point made by the examiner that transatlantic passenger charter revenues should, if such charters are operated efficiently, have a beneficial effect on the over-all operations of the all-cargo carriers.[21] Riddle has in the past had more or less consistent serious financial difficulties and was denied a special order pursuant to §207.13 of Part 207 of the Economic Regulations for permission to provide transatlantic passenger charter services during the summer season.[22] In the 1962 season, although it had contracts for 226 transatlantic passenger charters (R. D. 49), it was able to perform only 129 and had to subcontract the rest. Further, although Flying Tiger and Seaboard indicated that each carrier anticipated that it could operate profitably in 1963 without the help of trans-

[21] He found that the record shows such charters to have been financially beneficial to Flying Tiger, and adds that they "could also prove advantageous to the other all-cargo carriers."

[22] Order E-19659, June 11, 1963.

atlantic charter revenue,[23] the recent reports filed by those carriers raise doubts as to the profitability of their operations for the year. However, even though the data before us tend to indicate that the cargo carriers need any available revenues, the same is true of the supplemental carriers. We do not consider that the need of the cargo carriers for revenues outweighs the public interest in assisting the selected supplemental carriers to achieve economic success by making available one of the few civilian markets remaining open to them.

Seaboard, both in its exceptions and brief and in a motion to dismiss all applications herein or, in the alternative, to stay all procedural steps, contends that the enactment of P. L. 87-528 has made this proceeding moot and precludes the Board from certificating either supplemental carriers or all-cargo carriers herein. With respect to the supplementals, the carrier's position is that since the passage of P. L. 87-528, the exclusive statutory basis for granting certificate authority to supplemental carriers is now section 401(d)(3) of the Act. Since the instant investigation was instituted prior to the enactment of the above law, and at a time when certificates of public convenience and necessity could be issued only pursuant to section 401(d)(1) and (2), which are no longer applicable to supplementals, the record cannot support the grant of a certificate under section 401 (d)(3). It is alleged that none of the evidence presented

[23] Tr. 963, 1142-4; Exh, SW-4A. Each carrier has been awarded a substantial contract with the Defense Establishment for fiscal 1963. For the year 1962, Seaboard indicated on its Form 41 reports that it had realized a net profit of $868,142, while Flying Tiger earned $2,810,932 in net income for the year.

was directed to the new statutory criteria, in particular to limitations necessary to confine the services to be rendered

20698

to supplemental air transportation as defined in the Act, under section 401(d)(3), and that the examiner failed to make findings or insert limitations in the recommended certificates in compliance with the section.[24]

Seaboard's position can be supported, in our opinion, only by taking an over-technical view of the relationship of P. L. 87-528 and the record developed herein. While it is true that the issues as framed when this investigation was started did not specifically include the limitations issue for supplemental certification introduced by P. L. 87-528, the order of investigation included not only the issue of whether certificated transatlantic charter services were required by the public convenience and necessity, but also the issue of the terms, conditions, and limitations that should be attached to any certificates that might be issued, and contemplated a comprehensive investigation into all aspects of the transatlantic charter problem, including the rules that should govern any transatlantic charter services that might be found to be required. The record is replete with evidence which would support findings on any limitations issue; the question of the possible amendment of Part 295, which regulation embodies the terms and conditions under which transatlantic passenger charter services supplemental to those of the scheduled route carriers are conducted, was thoroughly explored and the examiner made findings thereon. Seaboard does not set out, and we are unable to ascertain in what other respect the section 401(d)(1) stand-

[24] Riddle also takes this position in its brief.

ards and section 401(d)(3) standards for certification are not identical; nor has Seaboard specified or shown in what particulars the record before us is insufficient to enable us to award authority in this proceeding subject to the provisions of sections 401(d)(3) and 401(n) of the Act and in conformity with P. L. 87-528.

Seaboard also argues that if the Board makes a determination herein respecting the place of the supplemental carriers in the transatlantic passenger charter market, it will be rendering a decision on basic policy questions which will necessarily serve as precedent in the proceedings under section 401(d)(3). Since the record did not focus on such questions, it is contended, this docket should not be utilized for such a purpose; indeed, it cannot be without prejudice to carriers who are not parties hereto, but who have a vital interest in being heard on such issues. Seaboard's argument is not persuasive. The detailed record in this proceeding respecting the need for charter services in this particular market, the impact of such services on the scheduled route operators, and the qualifications of the various supplemental applicants was compiled with participation of all the interested parties and forms a better basis for the determination of what carriers should be certificated to provide supplemental service in the transatlantic passenger market than a broader supplemental certification proceeding. Any general questions concerning "broad issues" which carriers not parties hereto wish to raise in the section 401(d)(3) proceedings will be considered therein on their merits, and without prejudice occasioned by the particular circumstances of this case.[25]

[25] There is nothing in P. L. 87-528 or the legislative history leading thereto which would indicate that the Congress intended that no supplemental authority should be granted in this proceeding.

Similarly, we reject Seaboard's contention that Congress did not intend that the Board issue section 401(d)(3) certificates during the transitional period covered by interim authority granted by the Board under sections 7 and 9 of P. L. 87-528.[26] No provision of that statute is cited to support this argument, nor is any reference made to the legislative history.[27]

Seaboard also contends that the all-cargo carriers' applications, including its own, should be dismissed. Its own application, in its view, is now moot by reason of amended section 401(e)(6) of the Act, which, it contends, establishes Seaboard's right to perform passenger charters over its cargo route stemming from its certificate of public convenience and necessity. This same amendment, Seaboard asserts, authorized other all-cargo carriers, by implication, to conduct passenger charters in the transatlantic market on an off-route basis. Thus, Seaboard argues, certification under sections 401(d)(1) and (2) is no longer necessary to authorize passenger charter service by all-cargo carriers, Congress intending the Engle Amendment to be the exclusive avenue of authority for the performance of such services of all-cargo operators, subject to the restrictions of Part 207 of the Board's Economic Regulations.

---

[26] Riddle makes a similar argument.

[27] The fact that no interim transatlantic passenger charter authority has been granted under section 7 of P. L. 87-528 is of no significance, since the Board expressly reserved decision thereon for this case (Order E-18868, October 5, 1962), and, furthermore, such operations have historically been conducted under Part 295 and its predecessors rather than pursuant to supplemental air carrier authority, upon which the scope of interim authority was predicated.

We have previously concluded that *all* passenger charters conducted by all-cargo carriers are off-route (see Regula-

20701

tion ER-375, March 26, 1963 and Order E-19602, May 22, 1963), and we here reaffirm that conclusion. Further, as we have indicated *supra,* the Engle Amendment was not intended to give the all-cargo carriers, a favored position in the transatlantic passenger charter market, but was intended merely to give a statutory basis for such operations to the extent that the Board might determine the services were required under the standards of the Act. This being so, we can find no basis for not disposing of the certificate applications of the cargo carriers herein. Further, we are satisfied that the Board can proceed to issue certificates for supplemental transatlantic charter transportation to supplemental air carrier applicants here and can later, through appropriate rule-making procedures, amend Part 207 in any manner that may be required by the public interest in the light of the certificate authority granted to the supplemental carriers herein.

Having determined that the public convenience and necessity require the certification of supplemental, rather than all-cargo carriers, to provide the needed transatlantic passenger charter service, we further find that Capitol, Saturn and ONA are the supplementals best qualified to perform such service.

In selecting the carriers to serve the transatlantic charter market, we are, as always, required to make a comparative evaluation of the several applicants' qualifications. However, because of the peculiar nature of the proposed services and the kind of applicants, the factors of importance

are somewhat different from those in the usual route case. Whereas such factors as beyond segment benefits and integration with existing routes normally weigh heavily in our determination, here, where none of the supplementals have authority to perform regular scheduled route operations,

20702

and will have no authority to perform any individually ticketed services after the interim period expires, such factors are of little, if any, weight. On the other hand, past experience with the operation of this market indicates that such factors as previous transatlantic charter activity and experience, availability of equipment, disposition to comply with the Act and the Board's rules and regulations thereunder and financial posture and prospects[28] should be significant in the selection of carriers to perform the proposed services. There has been considerable turnover in the carriers participating in the transatlantic charter market; at the same time, passengers have been subject to delays, strandings and other inconveniences. We think these facts demonstrate that historical experience in serving this particular market, with the expertise which that engenders, and financial stability and resources are the factors of primary importance here. In addition, not only does historical participation connote expertise and interest in the market but the participating carriers have earned revenues therefrom of which they should not be deprived without strong reason.

From the viewpoint of previous charter experience and historical participation in the transatlantic charter market, Capitol and ONA are outstanding among the supplemental

[28] We recognize that these are also aspects of the carriers' fitness, willingness and ability under section 401(d)(3).

applicants, having performed 313 and 200 such charter flights respectively in the period 1957 through 1962. The next largest participant among the applicant supplementals was Saturn, with 56 charter flights in that period. Of the re-

maining seven supplemental applicants, four (World, Modern, Quaker City and Paramount) have never performed any transatlantic passenger charters and Great Lakes performed only one, in 1957.[29] ATC and USOA performed 45 and 46 such charters respectively in the period 1957-1962; however, neither performed any in the year 1962.

From the financial standpoint, Capitol, ONA and Saturn merit preference over the other supplemental applicants. Since the record in this proceeding was compiled, a thorough examination of the financial qualifications of the various supplementals, based on more recent data, was made by the Board in connection with the granting of interim operating authority. All of the supplemental applicants herein were applicants then. Of the supplementals who have participated in the transatlantic charter market in previous years, only Capitol, ONA, Saturn and USOA were found to be financially qualified to perform supplemental air trans-

---

[29] In any event Great Lakes is disqualified for certification by its lack of compliance disposition (see 294 F. 2d 217 (D. C. Cir., 1961), *cert. den.*, 366 U. S. 965 (1961) and 291 F. 2d 354 (9th Cir., 1961), *cert. den.*, 368 U. S. 890, *reh. den.*, 368 U. S. 336 (1961)) which goes to fitness, willingness and ability to perform the transportation and the fact that it has no interim supplemental authority, MATS contracts, nor is it an applicant for permanent supplemental authority, some of which would be necessary to enable it financially to conduct transatlantic charter operations on a sustained basis.

portation.[30] ATC was denied interim authority[31] and thus is currently disabled from performing charter (or individual) operations as a common carrier. Since that time, the Board has had occasion to re-examine the financial qualifications of those carriers to operate in the transatlantic

20704

charter market itself in determining applications for amendments to interim operating certificates to conduct such charters during the 1963 season. Again, the Board found Capitol, ONA and Saturn to be in an adequate financial position to undertake such operations.[32] However, it found that the deterioration of USOA's financial condition and its prospects placed it below the standard of fitness required for proper conduct of a transatlantic passenger charter program.[33] As of February 28, 1963, its net worth had decreased to negative $1,401,000, and overall financial condition deteriorated $533,000 from its condition as of the date interim operating authority was granted. Furthermore, the carrier did not have all necessary MATS clearances for performance of MATS operations and its prospects in that report were regarded as a matter of speculation. Under these circumstances, we are constrained to exclude USOA from certification in this proceeding in the absence of any advantages

---

[30] Orders E-18871, E-18867, E-18868, and E-18884, October 5, 1962.

[31] Order E-18866, October 5, 1962.

[32] Orders E-19612, May 24, 1963, E-19632, June 3, 1963 and E-19635, June 5, 1963.

[33] Orders E-19589, May 16, 1963 and E-19648, June 7, 1963.

which would result from its authorization substantial enough to overcome these deficiencies.

As we have noted, *supra*, questions of experience, financial posture, compliance disposition and equipment availability go to the issue of fitness, willingness and ability properly to perform the supplemental air transportation under consideration in compliance with the Act and the rules, regulations and requirements of the Board thereunder, and our foregoing findings in these respects are per-

20705

tinent to the latter issue. As we have seen, Capitol, ONA and Saturn have all had experience in performing transatlantic charters, Capitol and ONA in particular having engaged extensively in transatlantic passenger charter operations. Each carrier has adequate equipment to perform such services[34] and, as the record indicates, has sufficient personnel available to conduct transatlantic charters without inconvenience to the traveling public.[35] Furthermore the record indicates that the three carriers selected are fit, will-

[34] Capitol has one Constellation and 16 Super Constellations; ONA operates 7 DC-7 aircraft and Saturn operates 3 DC-7 aircraft.

[35] Although it has been suggested that some of the supplementals, including those selected, presently do not necessarily have substantial enough overseas organizations to provide reliable service, but rather handle overseas services by contract arrangements, it is expected that certification of a small number of carriers will enable them to expand their overseas facilities and generally to concentrate on the development of service in the transatlantic charter market. It has also been intimated that the fluctuation in their numbers of employees suggests that such carriers operate with only casual personnel; however, we do not find this to be established and, in any event, would expect supplemental carriers, from the nature of their business, to have some fluctuation in the level of employment.

ing and able to conform to the Act and the Board's rules and regulations thereunder from a compliance standpoint. Neither Saturn nor ONA has ever been the subject of a Board cease and desist order or, as far as it appears, violated the Act. While Capitol has in the past been charged with violations of the Act, such violations were limited in number, and, when viewed with its whole compliance record, do not indicate either a predisposition to violate the law, or unwillingness to conform to the law in the future.[36]

20706

The Board has already, as noted, found the three carriers financially fit to operate a Part 295 transatlantic charter program for the 1963 season, as well as to receive interim operating authority pending disposition of their applications for permanent authority under section 401(d)(3). Since receiving authority to operate during the 1963 transatlantic charter season, Capitol's negative net worth noted by the Board at that time has now become a positive figure. Saturn continues to have a positive net worth, although it has suffered a net loss for the year to date, and ONA's financial situation has not changed sufficiently to lead us to conclude that it does not have the financial resources to conduct supplemental services in the transatlantic passenger market. It should be borne in mind that both Capitol and ONA have withstood substantial losses in earlier years, at the same time developing a considerable market in transatlantic charters. Saturn has built up its participation in the market in a relatively short time. We consider the ability to serve and promote a market in spite of financial

[36] See Order E-18871, October 5, 1962.

handicaps to be more indicative of fitness than month-by-month balance sheets. Accordingly, in view of all the foregoing, we find Capitol, ONA and Saturn fit, willing and able to provide air transportation in the transatlantic passenger charter market in conformance with the Act and the Board's rules and regulations thereunder.

20707

Terms and Conditions

The examiner recommended that the supplementals which he selected should be given only temporary transatlantic charter authority which should not extend beyond the 1963 charter season, and that final decision on *all* the applications of supplementals be deferred until the Board has determined the scope of other supplemental air services which may be authorized pursuant to applications for permanent authority under section 401(d)(3). His reasons for this restriction were that any carrier authorized to conduct transatlantic charters must have some other basic year-round operation on which to attach such incidental or subordinate authority and that the scope and tenure of the supplementals' permanent section 401(d)(3) authority, which is not yet known, has an important bearing on the comparative qualifications of such carriers. From the same premises, the Bureau recommended that the three supplementals should be certificated in this proceeding for a period of five years, with a condition that the certificates should provide for automatic termination in the event permanent supplemental authority is denied these carriers. While we agree that revenues from the conduct of some other operations are desirable and probably necessary for the holders

of transatlantic charter authority, we do not find the limitations suggested by either the examiner or bureau counsel necessary. All three selected supplementals have been granted interim operating authority pending disposition of their applications for permanent supplemental certification. Providing for only temporary seasonal authority or for

20708

automatic termination upon denial of their permanent applications would be small improvement over their prior status in terms of long range planning, would very likely decrease the chosen carriers' incentive to develop transatlantic charter traffic and make more difficult their problems of obtaining new equipment and adequate financing. In the event that one or more of the three carriers is denied permanent certification in the section 401(d)(3) proceedings, we can at that time take such steps as are deemed appropriate with respect to transatlantic charter authority. Accordingly, we shall award Capitol, ONA and Saturn certificates of five years' duration.

Amendments to Part 295

As defined in the initial orders in this investigation,[37] the issues in this proceeding comprehend rule-making as well as licensing. The Board stated that it contemplated a full consideration of the rules which should govern any operations certificated herein including further consideration of rules established by the then recent amendment of Part 295 and invited the applicants and all parties not only to offer any suggestions which they might have with regard

[37] Orders E-16023, November 14, 1960 and E-17190, July 18, 1961.

to the suitability of the rules or Part 295 for a long range program, but also to come forward with any new concepts which they may consider appropriate. Numerous proposals regarding the amendment of Part 295 were presented to the examiner and debated by the parties.

20709

Two major innovations in Part 295 have been proposed by the applicants. The first is the redefinition of the term "charter flight" (which is now defined in terms of the entire capacity of one or more aircraft), to permit certificated transatlantic charter operators to carry less than planeload, or "split" charters.[38] The second, also strongly advocated by ASTA, is the modification of the present restrictions on travel agents in Part 295 so as to permit them to charter aircraft for the movement of groups on all-expense paid tours organized and publicly solicited by them.

The examiner rejected both of the above proposed revisions on the ground that while their adoption would increase the potential utility of transatlantic charter services it would be contrary to the public interest since such an expansion would have severe competitive implications, exposing traffic of Pan American and TWA to diversion at a time when their transatlantic services are experiencing serious economic problems. He found, however, that the operation of split charters unaccompanied by all-expense tour authority would not seem to carry any unusual competitive implications if the applicants used piston-engine

[38] All the applicants except USOA proposed that their charter authority be extended to groups of 25 persons or more (20 in the case of Great Lakes) and that "spontaneous" as well as "affinity" groups be declared eligible, as those groups are defined in the IATA agreements.

aircraft as against the jets of the scheduled route carriers at only moderate fare differentials. Even with the operation of large jet split charters, which he considered more diversionary, the diversion from group fare traffic would,

he concluded, be scattered among the IATA carriers and the portion diverted from Pan American and TWA would not be unduly great. Pan American, he thought, could probably absorb the diversion without any noticeable effect upon its transatlantic operations, while it would be more harmful to TWA in view of the substantial operating losses from its transatlantic services between 1958 and 1961.

All-expense tour charters, the examiner concluded, would have much more drastic diversionary effects than would split charter authority, exposing to diversion the substantial volume of historical all-expense tour business carried by Pan American and TWA (13 percent of its economy fare passengers in the case of Pan American, $12.5 million 1961 revenues for TWA). Since a large part of such traffic is promoted and sold by travel agents, agents offering all-expense groups tours on flights they have committed themselves to charter will logically channel their group tour traffic to such charter flights in order to preserve their investments in organization and promotion. Taking the two proposals together, the examiner found they would have serious competitive implications, which might be overlooked in the interest of developing new areas of air travel if the transatlantic services of the U. S. flag carriers were in a state of normalcy.

Upon consideration of the record and the arguments of the various parties both supporting and opposing these

two proposed revisions, we find ourselves in agreement with the examiner's rejection of the proposed authorization of all-expense tour charters. On the other hand, we find that

20711

it is in the public interest to amend Part 295 to permit the chartering of one half the capacity of any given aircraft to one group and the chartering of the capacity of the other half of the aircraft to a second group. Each of the two groups will be required to meet the eligibility requirements of the regulation.

The record herein supports the position of the applicants that the present restriction of Part 295 to planeload charters operates to deprive many smaller *bona fide* organizations of the opportunity to participate in transatlantic charter travel because of inability to fill an entire chartered aircraft.[39] As equipment used in the transatlantic charter market becomes larger, this situation will be aggravated and more and more would-be chartering organizations will be excluded by the mere size of the aircraft. Groups of a size which, a few years ago, could fill aircraft then being used in the transatlantic charter market now could utilize only half the space in the intercontinental jets coming into use in this market. While the advent of group fares on the flag carriers may be, to some extent, an alternative lower cost form of air transportation, we have noted the drawbacks of group fares as opposed to charters, and we are unwilling to withhold from this part of the potential air transportation market the advantage of transatlantic charters solely because of increases in the size of equipment.

[39] Exhs. J-A, pp. 1-2, CAP-T-1, p. 4; FTL-25, Tr. 1074-5.

It does not appear to us that the relaxing of the plane-load charter requirement to allow carriage of two rather than only one charter group on a single aircraft will have diversionary consequences sufficient to offset the above-noted benefits resulting from such authorization. In the first place, because of the disadvantages of group fares *vis-a-vis* charters, which we have referred to *supra*, p. 6, charter flights whether of whole or half-a-plane capacity should largely serve traffic which would otherwise be unreached by the scheduled carriers. Secondly, as we will permit no more than two groups in an aircraft, such split charters would involve groups of at least 40 passengers, assuming the use of the same type of piston equipment currently in use in the transatlantic charter market. Such charters would not be competitive for groups of 25 permitted group fare savings on IATA carriers' scheduled services. If jet equipment is used, the disparity in numbers would be even greater and the probability of diversion even less.

Thirdly, we agree with the examiner that the diversionary effect, if any, of split charters will be distributed among the various IATA carriers and not necessarily concentrated upon Pan American and TWA. In any event, the financial position of TWA, with which the examiner was chiefly concerned, has changed considerably for the better since 1961, the period referred to in the recommended decision. Its international operations for the year 1962 showed an operating profit of $15 million and a net profit of almost $7 million, as contrasted with a loss of $13 million in 1961.[40]

[40] Passenger revenues (scheduled) increased in 1962 by $15 million; transatlantic passengers increased by one-third or 68,870 passengers. Pan American's traffic in the transatlantic market increased by 11.2 percent, or about 45,000 passengers.

20713

Pan American's operating profit in its Atlantic Division also increased by $8 million in 1962 over 1961, to $12,488,604, while its net profit increased almost $2 million to $6,671,342. In light of the 1962 figures, it cannot be concluded that the minimal amount of diversion which can be anticipated from the possible offering of charter space to two groups on any one plane by the carriers herein selected to provide transatlantic charter service will seriously affect the transatlantic operations of either TWA or Pan American.[41]

Amendment of Part 295 to allow chartering of an aircraft by travel agents for all-expense tours would, on the other hand, have more serious consequences for the scheduled transatlantic route carriers. As the examiner pointed out, a significant portion of their traffic and revenue is derived from economy fare passengers on all-expense tours sold by travel agents. Since members of the public as such cannot be solicited for group fares, the fare differential between an all-expense tour via an IATA carrier and via a Part 295 charter would be based on the regular economy fare. The price differential between these two fares (about $200 for a New York-London round trip) would, in our opinion, increase the diversion potential to a degree not warranted by the attendant benefits of allowing such charters at the present time.

20714

The scheduled route carriers participating in this proceeding contend that the Board is precluded, as a matter of

[41] The most recent reports filed by both carriers show still further improvement for 1963 operations.

law, from authorizing the carriage of less than planeload charters. Their argument is that (1) heretofore, the Board has accorded the term "charter trip" the meaning of a flight involving a contract for the entire capacity of an aircraft and (2) the legislative history of P. L. 87-528 makes it clear that Congress intended that the word "charter" used therein should have its traditional meaning and intended *not* to permit the authorization of split charters thereunder.

The term "charter" appears twice in the Federal Aviation Act: in section 101(3), added by P. L. 87-528, defining supplemental air transportation as "charter trips" pursuant to a certificate granted for that purpose, and in section 401(e)(6) which authorizes off-route "charter trips and other special services" by regular route operators. Nowhere in the Act is the term "charter" defined.

The Board has hitherto, in pertinent regulations and matters before it, restricted permissible charter transportation to the engagement of the entire capacity of an aircraft for transportation on a time, mileage or trip basis.[42] However, it has nowhere taken the view that a whole planeload lease is the *only* arrangement that could qualify as a

charter within the meaning of the Act.[43] The past limita-

---

[42] See, *e.g.*, Parts 207, 212 and 295 of the Economic Regulations, and *Charter Flight Tariff Investigation*, 15 C. A. B. 921 (1952).

[43] In DR 42, January 11, 1950, the Notice of Proposed Rule Making by which notice was given of the Board's consideration of the original issuance and draft of Part 207, governing charters of certificated carriers, the Board, in its explanatory statement, said:

"The definitions of 'charter trip' and 'special service' (substantially the same as the 'entire capacity' definition of Part 295)

tion to planeload charters has been based primarily on policy considerations arising out of enforcement problems anticipated as resulting from other configurations and the lack, heretofore, of any showing of a substantial *need* for charters of less than planeload capacity,[44] rather than on any presumed lack of power to construe the term "charter" otherwise. Our primary concern has been with retaining what we consider to be the significant element of "charter" air transportation—not any innate requirement of a planeload lease, but the distinction between group carriage as opposed to the carriage of individually ticketed

20716

passengers drawn from the general public.[45] It is this distinction which must be maintained in order to justify the

---

contained in §207.1 of the new part have been made solely for the purpose of establishing the scope of permissible operations of this character, and not with the idea of attempting to define the meaning of these terms as used in §401(f) of the Act."

And in *Seaboard & Western A. L., Inc., Enforcement Proceeding*, Order E-17920, January 9, 1962, the Board stated:

"We think it clear on the basis of Board precedent that in *the absence of specific authorization* * * * a 'charter' does not carry with it the authority to combine loads or transport commercial 'fill-up traffic'." (emphasis supplied)

[44] *Foreign Off-Route Charter Service*, 27 C. A. B. 196 (1958), *ACTA-IMATA Commercial Charter Exchange Investigation*, 22 C. A. B. 760, 768-9 (1955); *Large Irregular Air Carrier Investigation*, 22 C. A. B. 838 (1955). Thus in the latter decision, the Board remarked (pp. 864-5):

"While the examiners would permit charters of one-half of a plane's capacity, we do not find from the record a substantial need for charters of less than planeload capacity, and we can see little purpose to be served by such an authorization."

[45] *Foreign Off-Route Charter Service*, 27 C. A. B. 196, 201 (1958); *Large Irregular Air Carrier Investigation*, 22 C. A. B. 838,

lower charter rates resulting from economies connected with handling groups rather than individually ticketed traffic.

Thus, at least as of the date when P. L. 87-528 was enacted, the Board was not by reason of anything in the commonly accepted definition of charter or statutory restriction lacking in power to authorize the performance of charters of less than planeload capacity.[46] While the Board has so limited its approval, it does not regard itself as foreclosed by its construction of the term "charter" from authorizing less than planeload charters if the public interest justifies such action.

In our judgment, the legislative history of P. L. 87-528 confirms the view that the Board has discretion to construe the undefined term "charter services" in consonance with the whole purpose of the Act. The original Senate bill, S. 1969, contained a definition of charter service which would have restricted it to air transportation where the entire capacity of one or more aircraft has been engaged, but would have allowed the chartering of such capacity to travel agents for operation of all-expense tours. The House bills which were considered, on the other hand, left the term "charter" undefined. The House Committee, in one of its reports, explained that it had been concluded that

20717

"authority to define charter services should be left, as at present, with the Board, subject to the limitations

[46] Neither the legislative history of original section 401(e)(6) nor that of section 208(c) of the Motor Carrier Act from which it was derived indicates any Congressional intent to limit the term "charters" to the exclusive use of a plane or motor vehicle.

contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." [47]

In conference, the Senate conferees receded from their position and the House version prevailed. The bill which was presented by the conference committee to both houses (and which was ultimately enacted) left the term "charter" undefined, and the reports of the conference committee made no reference to the problem. Against this background, we conclude that the law deliberately left with the Board authority to define "charter services."

The Board is aware that during the debates on the bill following conference, various Senators and Congressmen, who were also conferees, expressed divergent views on this question, with some indicating that the Board's authority to authorize charter service was intended to be limited to charters coming within the definitions presently embodied in the Board's regulations. However, these remarks[48] of individual members do not, in our opinion, affect the fact that as reported (and enacted), the law contained no definition of charter and placed no strictures or conditions

on the Board respecting its construction. Further, the statement of Senator Monroney, a manager for the Senate and Chairman of the Senate Subcommittee on Aviation,

[47] H. Rept. No. 1177 on H. R. 7318, 87th Cong., 1st Sess., p. 11.

[48] These statements basically reflect the concern of the legislators in maintaining the distinction between group and individual carriage.

affirms our view. He said, referring to the elimination of the charter definition contained in the Senate bill:

> "The charter definition would have operated to prohibit the granting of split charters—that is, the transportation of more than one charter group in a single aircraft. We felt that the Board should be left free to determine on its merits the desirability of permitting the supplemental carriers to conduct such charters, in view of the fact that the charter business will ultimately represent the only source of revenue for these carriers. Another reason why we desire to leave the Board sufficient flexibility so that it might permit split charters was the effort of the Defense Department to encourage these carriers to acquire modern turbine-powered equipment for the civil reserve air fleet. The size of such aircraft makes it virtually impossible to find a charter group sufficiently large to fill an entire aircraft." [49]

Accordingly, the bill which was enacted as P. L. 87-528 left the term "charter" again undefined and subject to Board construction appropriate to the regulatory scheme of the

Act,[50] and we find no need to go beyond the legislative enactment to ascertain the extent of our latitude in construing

[49] 108 Cong. Rec. 11425.

[50] Congressional reenactment of certain language has been held not necessarily to mean that prior administrative construction has become so embedded in the law that only Congress can effect a change, and a change in administrative interpretation, operating prospectively after Congressional reenactment has been held valid. *Commissioner of Int. Rev.* v. *Air Reduction Co.*, 130 F. 2d 415 (2 Cir., 1942).

the statutory term "charter." As Justice Jackson stated, in his concurring opinion in *Schwegmann Bros.* v. *Calvert Corp.*, 341 U. S. 384, 396 (1951):

> "* * * The Rules of the House and Senate, with the sanction of the Constitution, require three readings of an Act in each House before final enactment. That is intended, I take it, to make sure that each House knows what it is passing and passes what it wants, and that what is enacted was formally reduced to writing. It is the business of Congress to sum up its own debates in its legislation. Moreover, it is only the words of the bill that have presidential approval, where that approval is given. It is not to be supposed that, in signing a bill, the President endorses the whole Congressional Record."

As we have indicated, the significant element of the charter concept is the maintenance of a distinction between group and individually ticketed travel. Split charters, restricted as they will be to one-half the capacity of an aircraft, and surrounded by the limitations embodied in Part 295, do no inherent violence to this essential distinction. We have noted the changed conditions in size of equipment prevailing today over the period when the charter regulation was first adopted. To adhere to a restriction to plane-load charters in the face of such changed conditions would be to ignore economic facts in favor of a sterile, and dubious conceptual rigidity.[51]

---

[51] We are not constrained to hold otherwise by the fact that the Interstate Commerce Commission, under the sections of the Motor Carrier Act which served as prototypes of section 401(e)(6) of the Federal Aviation Act, has by regulation and case law required that

The examiner, although he rejected the proposed revisions of Part 295 to allow split charters or all-expense tours, recommended that the regulation be amended in several other important particulars, to wit: (1) the limitation (§295.30) on the size of eligible chartering organizations to a maximum of 20,000 members (except colleges or universities located in one local area) should be deleted, (2) the prohibitions against travel agents assisting in the formation of charter groups, handling the sale of air transportation to members of the group, engaging in the administration of charter flights, soliciting individuals for land tours and receiving commissions (contained in §§295.20, 295.21, 295.22, 295.23 and 295.24) should be removed. In these recommendations, we concur.

The limitation on size of the chartering organization was intended to prevent diversion from scheduled service, on the theory that large organizations are almost indistinguishable from the general public. However, we are of the opinion that at this juncture the six-month membership requirement of section 295.30[52] reinforced, as it will be,

---

exclusive use of a vehicle be engaged by a single charterer. The difference in size of a bus which accommodates at the most 40 passengers and a modern jet aircraft capable of carrying 165 passengers is obvious. In any event, regulatory concepts under the Interstate Commerce Acts are not to be imported uncritically into the Aviation Act. *C. & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103 (1948); *Las Vegas Hacienda, Inc.* v. *C. A. B.*, 298 F. 2d 497 (9th Cir., 1962).

[52] Since the examiner issued his recommended decision, the Board by Reg. ER-382, May 23, 1963 exempted business entities and government organizations from the limitation and eliminated the "local area" limitation applied to colleges and universities.

by mandatory maintenance of membership lists, constitutes a sufficiently substantial restriction of charter flights to the general public so as to render the numerical limitation unnecessary. The record indicates that the present effect of this requirement is largely to foreclose *bona fide* organ-

20721

izations from engaging in charter programs; no evidence has been presented to demonstrate any real diversionary danger from removal of this restriction. The lifting of this limitation should, in our view, increase the availability of low-cost transportation and, in the absence of any adverse effect upon scheduled services, is consistent with the public interest.[53]

With respect to the elimination of the aforementioned restrictions on the activities of travel agents, the examiner has fully and adequately discussed the reasons for such elimination. We believe that allowing travel agents greater freedom in these respects will enable the further development of charter travel by organizations now unable or unwilling to organize their own programs. With the certification of only three carriers, any enforcement problems resulting from the lifting of these restrictions should be minimal.

However, we will also adopt a new provision to be added to Part 295, as recommended by bureau counsel, to assist in the enforcement of the six-month membership requirement of section 295.2(k) requiring that each chartering organization maintain a central membership list containing

[53] The Board has required the IATA carriers to eliminate this restriction in the group fare resolution for 1963. Orders E-19294, February 12, 1963 and E-19385, March 18, 1963.

the date each member joined the organization, and that this list should be available to both the carrier performing the charter flight and the Board. This provision will aid

20722

the Board and the carrier in determining whether participants in a pro rata charter are *bona fide* members of a group eligible to charter, as distinguished from the general public. There is no indication that such a requirement will impose a serious burden on any *bona fide* organization.[54]

The examiner properly recommended that the requirements contained in Policy Statement No. 13 (now Policy Statement No. 17, Sec. 399.41 of Part 399 of the Board's Regulations) respecting liability insurance, substitute air transportation and incidental expenses on the return portion of a transatlantic charter flight, should be incorporated in Part 295. Bureau counsel now suggests that these provisions should be modified to reflect the equivalent requirements of current Part 208 of the Board's Economic Regulations. We are, however, satisfied that for the most part the special requirements of Policy Statement No. 17, which pertains solely to transatlantic charters, are more appropriate for inclusion in Part 295 than the somewhat more stringent provisions of Part 208 (except insofar as the Part 208 insurance requirements are now incorporated by reference into Policy Statement No. 17). We will, however, incorporate the provisions of §208.21 of Part 208, limiting the subcontracting of charters to carriers authorized

[54] The fact that such a requirement is not now imposed in connection with the IATA carriers' group fares does not preclude us from imposing it here.

by the Board to perform such services. No other revisions of Part 295 were proposed to us that were not effectively considered, and disposed of, by the examiner.

Finally, we find, in accordance with the provisions of section 4(a) of the Administrative Procedure Act, that notice and public procedure on the regulations we are

adopting are unnecessary and would be contrary to the public interest. As we have noted, the orders delineating the issues of this proceeding (which were published in the Federal Register) made clear that the amendment of Part 295 was one of the subjects of investigation. All interested parties were given notice and have had an opportunity to present whatever suggestions they deemed appropriate respecting the amendment of Part 295, and to comment on the positions of other parties. The examiner attached to his recommended decision an amended Part 295 based on the current regulation, but modified to the extent he deemed called for by the evidence and briefs of parties. Although the regulation we are reissuing differs in some of its provisions from the regulation proposed by the parties and/or the examiner, all of the provisions were either taken from the existing regulation or Policy Statement 17, or their substance was the subject of intensive examination and argument by the parties. Under these circumstances, it is clear that public rule-making procedures are not required in fairness to any person and that to follow those procedures would only result in further delay, contrary to the public interest, in making effective the authorizations we have determined to grant. We will, therefore, adopt the amended Part 295 at this time and provide that it shall

become effective on the effective date of the certificates to be issued herein.[55]

We have considered the remaining contentions of the parties and their exceptions to the recommended decision and find that, except to the extent indicated herein, they should not alter the results we have reached.

20724

Accordingly, in view of the foregoing and all the facts of record, we find that the public convenience and necessity require:

That certificates be issued to Capitol, Saturn and ONA, authorizing the supplemental air transportation of persons and their personal baggage between points in the 48 contiguous states of the United States of America on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India on the other hand, for a period of five years, subject to the terms, conditions and limitations prescribed in Part 295 of the Board's Economic Regulations, which is attached hereto and made a part hereof, and to such other reasonable terms, conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

We further find:

1. That Capitol, Saturn and ONA are each citizens of the United States within the meaning of the Act, and are

[55] The certificates will contain an effective date of 60 days after approval by the President.

fit, willing and able properly to perform the supplemental air transportation hereinabove authorized to be performed by each of them and to conform to the provisions of the Act and the rules, regulations and requirements of the Board thereunder.

2. That the public interest requires that Part 295 of the Economic Regulations should be revised and reissued, in the form attached hereto as Appendix B, concurrently herewith, effective on the effective date of the certificates to be issued herewith.

20725

3. That, except to the extent otherwise indicated, all applications, motions and requests involved in this proceeding should be denied.

4. That this investigation should be terminated.

Appropriate orders will be entered.

MURPHY, Vice Chairman and MINETTI, Member, concurred in the above opinion. GURNEY and GILLILLAND, Members, filed the attached joint dissenting opinion.

20726

GURNEY and GILLILLAND, Members, Dissenting:

The record before us fails to establish that the public convenience and necessity require the certification of any of the applicants for transatlantic charter authority. Further, in our judgment, the basic concept of charter service should not be expanded to include split charters.

The transatlantic market is saturated with the competitive services of 19 carriers at all price levels including charter. The Board, however, has found a need for additional charter services based upon the alleged growth in

the charter market. Significantly, the route carriers in 1962 carried 74 percent of the charter passengers. The fact that the Part 295 carriers carried the remaining percentage does not show a need. It only shows a participation and diversion from the route carriers.

As a result of the intense North Atlantic competition the past operations of the U. S. Flag carriers, Pan American and TWA, have been but marginally successful. In 1961 Pan American's return on investment on its North Atlantic operations was only 4.31 percent and TWA incurred a loss of $13,711,000 on its international operations. During the past eleven years, TWA's international services have resulted in a net loss and Pan American's return has been but moderate.[1] The foreign flag carriers have also suffered losses. SAS reported an $18 million loss

for the year ended September 30, 1961, Air France a loss of $10 million, and KLM a loss of $21 million for the calendar year 1961. BOAC recently announced a loss of over $40 million for the year ending March 31, 1962.

The certification of three more carriers in the North Atlantic market may produce additional international problems, and may tend to restrict the charter operations of all our carriers by foreign governments. On the other hand it is a precedent for the establishment of new foreign charter carriers in this market already saturated with multitype services and fares.

---

[1] Revenues of both carriers increased in 1962 and profits were reported; however, the earnings over the long term are the yardstick by which their operations should be judged. *General Passenger Fare Investigation*, Order E-16068, November 25, 1960, pp. 70-71.

The charter concept should not be expanded to include split charters. Such authority will result in further diversion and deterioration of the financial condition of the route carriers. Split charter authority is not in the public interest and we concur with both the Examiner and Bureau Counsel on this issue.

It is alleged that split charters are required for the small groups who are unable to provide sufficient number of persons to fill large jet aircraft and to provide a competitive tool for the IATA group fares. There is no evidence that any substantial number of groups have been unable to charter aircraft because of the size of the plane. If some groups are insufficiently large to warrant the full capacity of the aircraft, the group fares of the IATA carriers are available.

The Board's position with regard to the Part 295 carriers and the charter market was made very clear in Order E-18224, April 26, 1962, when the group fare was approved. In that approval, the Board stated:

> ". . . The economic health of the United States certificated transatlantic carriers is a matter of prime concern to the Board in the public interest. These carriers are required by their certificates of public convenience and necessity to perform regularly scheduled transportation for the general public in good years as well as bad years, in the off season as well as the peak season, and over their thin 'national interest' routes as well as the lush North Atlantic. Their need for the assistance which the group fares will provide is established. On the other hand, the Part 295 carriers have

(20728, 20729)

no obligation to serve the North Atlantic, and may and do move in and out of the market at will. Their participation in the total market is extremely small. Moreover, it has not been shown that the impact on them will be critical. Under these circumstances we could not disapprove the proposal in order to protect the Part 295 carriers from a potential loss of revenue." (Mimeo pp. 14-15)

The word "charter" as used with regard to transportation has customarily been considered to contemplate the hire of an entire vessel or vehicle. The Board's definition of "charter" in Part 207 of the Economic Regulations retained this interpretation.[2] The Interstate Commerce Commission has defined the word "charter" in the same manner. (See, *Crescent Express Lines* v. *United States*, 320 U. S. 401 (1946).)

In Public Law 87-528 the term "charter" is undefined. However, language in the debates on the Bill in both the House and the Senate indicate an understanding of the Board's definition of "charter trips" which would not include "split charters" or all-expense tours. Congressman Harris, Chairman of the House Interstate and Foreign Commerce Committee, and a Manager on the Part of the House on Public Law 87-528, stated:

20729

"A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for

[2] Also see Parts 212 and 295 of the Economic Regulations and *Charter Flight Tariff Investigation*, 15 C. A. B. 921 (1952).

a particular purpose by a single engaging party." (108 Cong. Rec. 11461)

Congressman Williams, Chairman of the Subcommittee on Transportation and Aeronautics of the House Interstate and Foreign Commerce Committee and one of the Managers on the Part of the House, stated:

> "So, there is no statutory definition of 'charter' in the bill. That definition will be the one which is presently in effect under a regulation of the Civil Aeronautics Board."

These views were concurred in by Senator Scott (108 Cong. Rec. 11427) and Senator Thurmond (108 Cong. Rec. 11427), Members of the Senate Commerce Committee.

For these reasons we would deny the split charters.

/s/ CHAN GURNEY
/s/ WHITNEY GILLILLAND

20730

APPENDIX A

(To Board's decision of October 8, 1963)

Docket 11908 *et al.*

The examiner's recommended decision referred to herein is not attached to this copy because of the wide circulation given at the time of its release. The recommended decision is attached to the original of the Board's opinion and to the official copies in the Board's files and may be examined there. It will also be printed as part of the official "Civil Aeronautics Board Reports."

(20731)

20731

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 8th day of October, 1963

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc.;

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on .....;

3. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied;

4. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

Approved:

.....

.....

(20732)

20732

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

OVERSEAS NATIONAL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supple-

mental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed

transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

(20733)

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on , and shall terminate five years thereafter: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of (Order E-), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the day of .

Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on
in Order E-

20734

DOCKET 11908 *et al.*

Note:

The certificates of public convenience and necessity for Capitol Airways and Saturn Airways, the Board's order adopting and issuing the Revised Part 295 of the Economic Regulations, and the Revised Part 295 itself, which were transmitted to the President with the Board's original opinion, are not included in this Appendix A. They are set forth following the Board's supplemental opinion and order (Order E-20530), adopted February 24, 1964.

(20868)

20868

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket 11908, *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

Petition to Intervene by

American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc., for the limited purpose of filing the attached Petition for Reconsideration of Order No. E-20531, adopting certain amendments to Part 295 of the Board's Regulations.

Comes now American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc. ("petitioners"), and each of them, to petition the Board to intervene in this proceeding for the limited purpose of filing the attached Petition for Reconsideration of Order No. E-20531 adopting certain amendments to Part 295 of the Board's Regulations. • • •

• • • • •

20871

* * * * *

6. The hearings in the case before an Examiner of the Board closed on May 2, 1962. On July 10, 1962, Congress passed P. L. 87-528. This law amended the Federal Aviation Act to authorize the issuance of interim authority to the Supplemental Air Carriers pending disposition of their applications for permanent certificates also authorized under the law. It further specifically amended Section 401(e) to eliminate the applicability of its charter authorization to Supplemental Air Carriers, and added Section 101(33) to the Act which defined Supplemental air transportation as meaning "charter trips . . . ." Accordingly, at that point the question of whether the Board had the statutory authority to authorize any variations in the accepted definition of "charter" under the then existing statutory provisions, the sole legal issue in this case up to that point, became moot.

20872

7. The *new* issue raised by the passage of P. L. 87-528 in July of 1962 was the scope of the Board's authority to define "charter" under the new Section 101(33) defining Supplemental air transportation as "charter trips", a matter which had been the subject of exhaustive treatment by the Congress. This new issue was immediately posed to the Board the month following the passage of P. L. 87-528 in the form of applications for interim authority by Supplemental Air Carriers which embraced requests for "split charters", all-expense tours, and other variations of "charter". Petitioners vigorously protested these requests

in the interim authority proceedings. The Board held that "there is a serious question whether the Board as a matter of law . . . " could grant such requests, but decided to defer decision thereon. Standard Airways, Inc., E-18883, p. 14, Oct. 5, 1962.[1] Furthermore, it announced through a Press Release dated March 27, 1963, that it intended to develop a program for processing the permanent certificate applications "prior to the close of Fiscal '63 . . . . " and on July 12, 1963, the Chief Examiner of the Board issued a "Notice" reporting the Board's decision to move forward with these applications in the *Supplemental Air Service Case,* Docket No. 13795, *et al.,* and soliciting from all airlines their written comments, to be submitted prior to August 5, 1963, on such matters as "the issues therein." Among the issues submitted by Petitioners, and others, of course, was the

20873

scope of the statutory authority of Supplemental Air Carriers to conduct "charters" as that term is used in the new Section 101(33) of the Act. Shortly thereafter the Board announced that "The basic role of the supplemental air carriers will be decided by the Board in the *Supplemental Air Service Case,* Docket 13795, *et al.,*" Order E-20078, Oct. 8, 1963.

8. The Board, however, has apparently now determined to use this case, commenced over 1½ years before P. L. 87-528 was passed, rather than the permanent supplemental air carrier certificate proceedings, as the vehicle for the statutory construction of the word "charter" in Section

[1] See also, *World Airways, Inc.*, E-19430, p. 7, March 29, 1963, and *Vance Roberts,* E-19875, p. 2, August 1, 1963.

101(33) of the Act added by P. L. 87-528. A majority of three members held that P. L. 87-528 "deliberately left with the Board the authority to define 'charter services'" which it might do "in consonance with the whole purpose of the Act." (Op., pp. 38, 37). From this ultimate finding of law, it made the subsidiary findings of law that the Board therefore had the statutory authority to authorize "split charters", and all-expense tour charters, although as a matter of policy the latter were not authorized in this decision.

9. These conclusions of law constituted a resolution of an issue of vital significance to Petitioners since, of course, the scope of the Board's *statutory* authority to define charter is identical for transatlantic charters as well as for domestic charters. The Board will be obliged to regard these conclusions as *stare decisis* in the permanent supplemental air carrier certificate proceedings in Docket 13795, *et al.*, if not as a matter of law, then as a practical

matter, for it is inconceivable that the Board would reach two different conclusions of law (as opposed to policy) on an identical issue in different proceedings. Indeed, the Board has already recognized this fact. It said in its Order E-20573, March 13, 1964, in Docket 13795, *et al.*, establishing the procedure for the applications of Supplemental Air Carrier permanent certificates, that any "pertinent principles to be gleaned from that proceeding (the *Charter Investigation*) are now available, subject, of course, to the normal procedures with respect to petitions for reconsideration." Of course, there may still be some additional

areas of the lawful scope of "charter" yet to be explored in Docket 13795, *et al.*, which were not covered in the decision in this case, but the statutory authority of the Board to approve such major, and highly disputed, expansions of the charter concept as "split charters" and all-expense tours have now been decided as a matter of law in this case.

• • • • •

20884

• • • • •

23. The application of the foregoing law to the facts of this case clearly demonstrates Petitioners' "substantial interest" in so much of the majority's decision holding that the Board has a broad authority to define "charter", as that term is used in Section 191(33) of the Act, and, more specifically, to authorize "split charters" and all-expense tours. This construction of law is as much applicable to "charters" in domestic air transportation, where Petitioners primarily provide service as it is to transatlantic "charters". Petitioners are competitors of the Supplemental Air Carriers domestically. They, therefore, have

20885

a "substantial interest" in the majority's construction of law without having to await additional administrative proceedings involving Supplemental Air Carrier's provision of domestic "charters" which will, as a matter of course, apply that statutory construction.

• • • • •

(21179)

21179

Order No. E-20650

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

SERVED APR 6 1964

Issued under delegated authority
April 3, 1964

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

(Financial fitness of Overseas National Airways, Inc.)

ORDER GRANTING AND DENYING INTERVENTION

By supplemental opinion and order E-20530 and E-20531, adopted February 24, 1964, the Board, *inter alia,* reopened the record in this proceeding for further hearing, on an expedited basis, to determine whether any developments since the Board's original decision have rendered Overseas National Airways, Inc., no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for that carrier.

By notice dated March 4, 1964, the examiner pointed out the probability that some persons participating as parties in previous stages of the proceeding would have no interest in the present reopened phase of the proceeding and stated his plan to limit participation to Overseas National Airways, Inc., Bureau counsel, and such of those interveners who should submit a statement requesting participation as an intervening party in this reopened phase of the proceed-

ing and that any other persons who participated as applicants in the *Transatlantic Charter Investigation* would be required to file an intervention petition in order to participate as a party.

Pan American World Airways, Inc., and Trans World Airlines, Inc., filed statements requesting continued participation as interveners. Intervention petitions were filed by Airlift International, Inc. (formerly Riddle Airlines, Inc.), Capitol Airways, Inc., The Flying Tiger Line Inc., Modern Air Transport, Inc., Saturn Airways, Inc., and United States Overseas Airlines, Inc. Answer opposing the intervention petitions was filed by Overseas National. By motion filed March 24, 1964, Overseas National also asks that the intervention of Pan American and TWA be rescinded. Pan American and TWA filed answers in opposition to the motion.

21180

Pan American and TWA are certificated air carriers conducting scheduled operations in the transatlantic area. Capitol and Saturn are the two applicants authorized to perform charter service by supplemental opinion and order E-20530 and E-20531. Airlift International, Flying Tiger, Modern, and U. S. Overseas are other applicants in the *Transatlantic Charter Investigation.* While Overseas National claims that their participation as parties will be for the purpose of delaying the proceeding, it has not established any improper conduct on their part.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.11, it is found, upon consideration of the foregoing facts, that the persons set forth in ordering paragraph 1 below have an interest justifying intervention in the *Reopened Transatlantic Charter Investigation* (financial fitness of Overseas National Airways, Inc.), docket 11908 *et al.*

ACCORDINGLY, IT IS ORDERED:

1. That Airlift International, Inc., Capitol Airways, Inc., The Flying Tiger Line Inc., Modern Air Transport, Inc., Pan American World Airways, Inc., Saturn Airways, Inc., Trans World Airlines, Inc., and United States Overseas Airlines, Inc., be and they are granted permission to intervene in the *Reopened Transatlantic Charter Investigation* (financial fitness of Overseas National Airways, Inc.), docket 11908 *et al.*

2. That intervention in the *Reopened Transatlantic Charter Investigation* (financial fitness of Overseas National Airways, Inc.), docket 11908 *et al.*, be and it is hereby denied to all persons other than those listed in paragraph 1 insofar as said persons would otherwise have the right to participate as parties.

3. That the motion of Overseas National Airways, Inc., to rescind the intervention of Pan American World Airways, Inc., and Trans World Airlines, Inc., be and it is denied.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

By Ralph L. Wiser
Hearing Examiner

HAROLD R. SANDERSON
Secretary

(SEAL)

(21199)

21199

Order No. E-20776

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 30th day of April, 1964

Docket 11908 *et al.*

TRANSATLANTIC CHARTER INVESTIGATION

ORDER

Various parties have filed petitions for reconsideration of the Board's decision in this proceeding.[1] In addition, nine domestic trunkline carriers[2] have requested leave to intervene for the purpose of filing a petition for reconsideration

---

[1] Airlift International, Inc. (formerly Riddle Airlines, Inc.), Capitol Airways, Inc., The Flying Tiger Line Inc., Modern Air Transport, Inc., Pan American World Airways, Inc., Saturn Airways, Inc., Trans World Airlines, Inc., United States Overseas Airlines, Inc., and the American Society of Travel Agents, Inc. Answers to petitions have been filed by Capitol, Overseas National Airways, Inc., Pan American, Saturn, TWA, and the Bureau of Economic Regulation.

[2] American Airlines, Inc.; Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

on the issue of the Board's power, as a matter of law, to authorize supplemental air carriers to operate so-called split charters.[3] Pan American has filed a motion to consolidate into the proceeding its recently filed application for unlimited transatlantic charter authority.[4]

In considering the disposition that should be made of the petitions for reconsideration, it is necessary to do so in the light of the present procedural posture of the *Transatlantic Charter Investigation.*

21200

The Board, in its original opinion of October 8, 1963, which it submitted to the President for his approval, found that Capitol Airways, Inc., Saturn Airways, Inc., and Overseas National Airways, Inc., should be issued certificates of public convenience and necessity authorizing them to provide transatlantic charter services and that all other applications and requests consolidated into the proceeding should be denied. The President, in his letter of February 18, 1964, approved the Board's decision to award certificates to Capitol and Saturn but returned the matter to the Board for further evaluation on the fitness of ONA. Pursuant to the President's directive, the Board reopened the proceeding for further hearings on the limited issue of whether any developments since the Board's original decision have rendered ONA no longer financially fit.

The President, however, did not take final action on the Board's recommendation that the applications of Capitol and Saturn to the extent they sought authority to provide

[3] Answers to the petition have been filed by Capitol, Modern, Saturn and the Bureau.

[4] Answers to the motion have been filed by Capitol, Saturn, and the Bureau.

all-expense tours, and the applications of the all-cargo carriers and the remaining supplemental carriers be denied, and those matters, like the application of ONA, remain undisposed of. Thus, the only final disposition that has been made of the various applications consolidated into the proceeding is a partial grant of the applications of Saturn and Capitol.

In view of the foregoing, the petitions, insofar as they seek reconsideration of the Board's determination that there is a need for certificated transatlantic charter service, that the authority should include the right to operate split-charters, that Capitol and Saturn are fit, willing and able and should be awarded certificates, and that certain of the preexisting restrictions on the size of eligible charter organizations and the activities of travel agents should be removed go to matters that are ripe for reconsideration and will be disposed of. Similarly, the petitions of the applicants, insofar as they seek their own certification in lieu of the certification of Capitol and Saturn will be disposed of. On the other hand, the requests of the unsuccessful supplemental and cargo carrier applicants that the Board certificate them in lieu of ONA, or in addition to Capitol, Saturn, and ONA and the requests for all-expense tour authority are premature and will be deferred for action at an appropriate future date.

On the merits of the petitions that are ripe for action, the Board finds that all requests for reconsideration of its decision should be denied. Essentially the various requests urge matters of law and policy which have previously been fully considered and rejected. Nothing has been presented which establishes legal error or warrants a change in the Board's policy determinations in its decision. The petitions

of Flying Tiger and Modern seeking to broaden the scope of the reopened hearing directed by Order E-20531[5] to

21201

encompass the receipt of evidence as to the financial fitness of carriers other than ONA are in conflict with the President's directive as contained in his letter of February 18, 1964 and will be denied.[6]

The petition of American *et al.* to intervene shall be dismissed. The petition was not timely filed and petitioners have not shown good cause for failure to file until this time. Moreover, intervention is sought only for the limited purpose of presenting argument on the issue of the scope of the Board's statutory authority to define the term "charter." This is a matter which has been fully litigated and argued in this proceeding and, as previously indicated, the Board will not reconsider its decision on the question.

In addition, Pan American's motion to consolidate Docket 11908 and its application in Docket 15108 for hearing shall be dismissed. The motion is not timely filed and no good cause for filing the motion at this late date has been shown.[7] In effect it appears that Pan American is seeking relief, via its certificate application, from the current provisions

[5] For obvious reasons USOA's request for an expedited hearing to determine whether it should now be certificated and that, pending certification, it should be temporarily authorized to solicit and perform transatlantic charters subject to such conditions of bond and/or escrow as the Board may require must be denied.

[6] See Order E-20709, April 16, 1964.

[7] Pan American relies on the proposed revision of Part 207 as good cause for its late filing. However, Pan American has had notice of the proposed revision since November 1962 (EDR-48, November 13, 1962) and did not file its application in Docket 15108 and its motion to consolidate until March 23, 1964.

of Part 207 of the Board's Economic Regulations with respect to charter operations.

In our original opinion we adopted the findings and conclusions of the examiner that certain of the preexisting restrictions of Part 295 of the Economic Regulations on the activities of travel agents in relation to charters should be eliminated. Pan American and bureau counsel have called our attention to the fact that in implementing the examiner's conclusions we deleted certain provisions of the regulations that could result in confusion and could be construed as granting authority going beyond that contemplated by the examiner and the Board. Further, Pan American has called our attention to the fact that in adding split charters to the basic definition of charter services we failed to make applicable to those charters the provisions requiring that a charter provide for the engagement of the aircraft "on a time, mileage or trip basis." Such a requirement has always been a part of the charter definition and was inadvertently omitted. In order to avoid confusion and to carry out the

intent of the Board, we will therefore reissue Part 295 so as to include therein the omitted provisions and to make applicable to split charters the provision requiring that a charter provide for the engagement of an aircraft on a time, mileage or trip basis.

ACCORDINGLY, IT IS ORDERED:

1. That, to the extent indicated herein, the petitions for reconsideration of the Board's decision in this proceeding be and they hereby are denied;

2. That the petition to intervene of American *et al.* be and it hereby is dismissed;

3. That the motion to consolidate of Pan American be and it hereby is dismissed;

4. That all remaining petitions and portions of petitions be and hereby are deferred for action at a future date;

5. That Part 295 of the Economic Regulations issued pursuant to Order E-20531, October 8, 1963, be and hereby is reissued in the form attached hereto and made a part hereof;

6. That said reissued regulations shall be effective on April 30, 1964.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

GILLILLAND, MEMBER, CONCURRING:

I adhere to my original views that the public convenience and necessity do not require certification of the applicants for transatlantic charter authority, and that the basic concept of charter service should not be expanded to include split charters. However, I do concur that the petitions for reconsideration should be denied since they do not raise any matters which establish legal error or warrant a change in the Board's decision.

GURNEY, MEMBER, DISSENTING:

I would grant the Petitions for Reconsideration and deny all the applications for transatlantic charter certificates for the reasons set forth in the joint dissent attached to Orders E-20530 and E-20531, adopted February 24, 1964, and October 8, 1963, respectively.

(21203)

21203

Regulation No. ER-408

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Revision of Part 295
Effective: April 30, 1964
Adopted: April 30, 1964

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

Revision of Part

By Order E-20531, adopted October 8, 1963, in the *Transatlantic Charter Investigation,* Docket 11908 *et al.,* the Board adopted and issued concurrently therewith amended regulations of the Board designated Part 295 of the Economic Regulations.[1] In Order E-20776, adopted April 30, 1964, the Board denied various petitions for reconsideration of its decision in the *Transatlantic Charter Investigation,* Docket 11908 *et al.,* and found that in order to avoid confusion as to the scope of revised Part 295 and accurately to reflect the Board's determination as to the conditions which should be applied to the transatlantic charter authority granted, Part 295 should be reissued. Since the reissuance embodies only clarifying changes, and for the

[1] Regulation No. ER-400.

reasons set forth in Regulation No. ER-400, the Board finds that further notice and public procedure hereon are unnecessary and not in the public interest.

Accordingly, the Civil Aeronautics Board hereby reissues Part 295 of the Economic Regulations (14 CFR Part 295), effective April 30, 1964, as follows:

Sec.

295.1 Applicability.
295.2 Definitions.
295.3 Waiver.
295.4 Separability.
295.5 Reporting and record retention.

Subpart A—Provisions Relating to Pro Rata Charters

295.10 Applicability of subpart.

Requirements Relating to Air Carriers

295.11 Solicitation and formation of a chartering group.
295.12 Pre-trip notification.
295.13 Tariffs to be on file.
295.14 Terms of service.
295.15 Agent's commission.
295.16 Prohibition against payments or gratuities.

Requirements Relating to Travel Agents

295.20 Prohibition against double compensation.
295.21 Prohibition against payments or gratuities.
295.22 Statement of supporting information.

Requirements Relating to the Chartering Organization

295.30 Solicitation of charter participants.

(21204, 21205, 21206)

295.31 Passengers on charter flights.
295.32 Participation of immediate families in charter flights.
295.33 Charter costs.
295.34 Statements of charges.
295.35 Passenger manifests.
295.36 Statement of supporting information.

21205

Subpart B—Provisions Relating to Single Entity Charters

295.39 Applicability of subpart.
295.40 Tariffs to be on file.
295.41 Terms of service.
295.42 Commissions paid to travel agents.

Subpart C—Provisions Relating to Mixed Charters

295.50 Applicable rules.

Subpart D—Procedure for Advisory Opinion on the Eligibility of a Charterer

295.60 Advisory opinion.

Authority: §§295.1 to 295.60 issued under sec. 204(a), 72 Stat. 743, 49 U. S. C. 1324. Interpret or apply sec. 401 (d)(3) and sec. 401(n); 76 Stat. 143, 144; 49 U. S. C. 1371.

21206

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

§295.1 *Applicability.*

This part establishes the terms, conditions, and limitations of transatlantic supplemental air transportation.

§295.2 *Definitions.* As used in this part, unless the context otherwise requires—

(a) "Transatlantic supplemental air transportation" means charter flights in air transportation performed pursuant to a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supplemental air transportation of persons and their personal baggage between points within the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

(b) "Charter flight" means air transportation performed by a direct air carrier on a time, mileage or trip basis where (1) the entire capacity of one or more aircraft has been engaged for the movement of persons and their personal baggage;

(i) by a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency); or

(ii) by a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services);

or (2) one-half the capacity of an aircraft has been engaged by a person for his own use or by a representative or representatives of a group for the use of such group and

(21206, 21207)

the remaining half of the capacity of such aircraft has been engaged by another person for his own use or by a representative or representatives of a second group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services).

With the consent of the charterer the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

(c) "Pro rata charter" means a charter the cost of which is divided among the passengers transported.

(d) "Single entity charter" means a charter the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

21207

(e) "Mixed charter" means a charter the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

(f) "Person" means any individual, firm, association, partnership, or corporation.

(g) "Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

(h) "Charter group" means that body of individuals who shall actually participate in the charter flight.

(i) "Charter organization" means that organization, group or other entity from whose members (and their immediate families) a charter group is derived.

(j) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, of such member.

(k) "*Bona fide* members" means those members of a charter organization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public. Presumptively persons are not *bona fide* members of a charter organization unless they are members at the time the organization first gives notice to its members of firm charter plans and unless they have actually been members for a minimum period of six months prior to the starting flight date. This presumption will not be applicable in the case of charters composed of (1) students and educational staff of a single school, and immediate families thereof, (2) employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof, or (3) participants in a formal academic study course abroad. In the case of all other charters, rebuttal to this presumption may be offered for the Board's consideration by request for waiver.

(l) "Solicitation of the general public" means (1) a solicitation going beyond the *bona fide* members of an organization (and their immediate families), such as advertising directed to the general public by radio, television, newspaper, or magazine, or (2) the solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

(21207, 21208)

§295.3 *Waiver.*

A waiver of any of the provisions of this regulation may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

21208

§295.4 *Separability.*

If any provision of this part or the application thereof to any air transportation, person, class of person, or circumstance is held invalid, neither the remainder of the part nor the application of such provision to other air transportation, persons, classes of persons, or circumstances shall be affected thereby.

§295.5 *Reporting and record retention.*

(a) Fifteen days after the end of each calendar month, each carrier operating pursuant to this part shall file with the Board's Bureau of Economic Regulation a report setting forth the following information pertaining to each charter flight performed during said month pursuant to this part:

(1) Date of trip;

(2) Points served;

(3) Number of round-trip and one-way passengers;

(4) Name of chartering organization;

(5) Description of chartering organization disclosing basis for conclusion that the group is *bona fide* (identify criteria relied upon);

(6) Name of travel agent; and

(7) Construction of tariff charge.

(b) Prior to performing any supplemental air transportation pursuant to this part the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof.

(c) Each air carrier operating pursuant to this part shall comply with the applicable record-retention provisions of Part 249 of this subchapter, as amended.

SUBPART A—PROVISIONS RELATING TO PRO RATA CHARTERS

§295.10 *Applicability of this subpart.*

This subpart sets forth the special rules applicable to pro rata charters.

REQUIREMENTS RELATING TO AIR CARRIERS

§295.11 *Solicitation and formation of a chartering group.*

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight.

(21209)

§295.12 *Pre-trip notification.*

Upon a charter flight date being reserved by the carrier or its agent, the carrier shall provide the prospective charterer with a copy of this regulation, Part 295.* The charter contract shall include a provision that the charterer and any agent thereof, shall only act with regard to the charter in a manner consistent with this regulation and that the charterer shall within due time submit to the carrier such information as specified in §§295.34 and 395.35 hereof and submit to each charter participant the information identified in §295.34. The carrier shall also require that the charterer and any travel agent involved shall furnish it in due time for review before flight the information required in §§295.36 and 295.22, respectively.

§295.13 *Tariffs to be on file.*

No air carrier shall perform any supplemental air transportation unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for the use of the entire capacity or one-half the capacity of one or more aircraft in such supplemental air transportation and showing all rules, regulation practices and services in connection with such supplemental air transportation, including eligibility requirements for charter groups not inconsistent with those established in this part.

---

* Copies of this regulation are available by purchase from the Superintendent of Documents, Washington, D. C., 20402. Single copies will be furnished without charge on written request to the Publications Unit, Civil Aeronautics Board, Washington, D. C., 20428.

§295.14 *Terms of service.*

(a) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity or for one-half the capacity of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter, *pro-*

vided that the carrier shall not charge the charterer for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(b) Insurance coverage shall be maintained in compliance with the insurance requirements of Part 208 of the Economic Regulations.

(c) The air carrier shall provide substitute transportation and pay incidental expenses, with respect to delays on return portions of flights, as follows:

(1) *Substitute air transportation.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the

(21210)

forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this subparagraph.

(ii) As soon as the air carrier discovers; or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other air carrier or foreign air carrier.

(iii) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(iv) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this subparagraph, periods of delay caused by the prohibition of flights from the airport of departure because of weather or other operational conditions shall be excluded if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group

in a condition of operational readiness posted at such airport.

(v) Air carriers may subcontract the performance of transatlantic passenger charter services which they have contracted to perform, only to air carriers authorized by the Board to perform such services.

21211

(2) *Incidental expenses.*

(i) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the take-off procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this subparagraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares.

(ii) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00 shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period of delay, or any fractional part thereof. If the delay continues beyond a period of 24 hours following the scheduled

departure time, such payments shall be made in equal installments of $4.00 for each further six-hour period of delay, or any fractional part thereof. *Provided, however,* That the air carrier may, at its option, discharge this obligation by providing free meals and lodging in lieu of making such payments. The obligation of the air carrier to pay incidental expenses or provide free meals and lodging shall cease when substitute air transportation is provided in accordance with the provisions of subparagraph (c)(1) of this section.

(d) Each and every contract for a transatlantic charter to be operated hereunder shall incorporate the provisions of subparagraphs (b) and (c) above concerning insurance, substitute transportation, and incidental expenses.

(e) The carrier shall require full payment of the total charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(f) In the case of a round-trip charter, one-way passengers shall not be carried except that up to five percent of the charter group may be transported one way in each direction. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the five percent limitation aforesaid. In the case of a charter contract calling for two or more round trips, there shall be no intermingling of passengers and each plane-load or one-half plane-load group shall move as a unit in both directions.

§ 295.15 *Agent's commission.* The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of five percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever to an agent if the agent receives a commission from the charterer for the same service.

§ 295.16 *Prohibition against payments or gratuities.* A carrier shall make no payments nor extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise. Nothing in this section shall preclude a carrier from paying a commission (within the limits of section 295.15) to a member of a chartering organization if such member is its agent, or restrict a carrier from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, canvas traveling bag or a money exchange computer).

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 295.20 *Prohibition against double compensation.* A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§ 295.21 *Prohibition against payments or gratuities.* A travel agent shall make no payments nor extend gratuities

(21212, 21213)

of any kind, directly or indirectly, to any member of a chartering organization whether in relation to air transportation or otherwise. Nothing in this section shall restrict a travel agent from offering to each member of the charter group such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, a canvas traveling bag or a money exchange computer).

§ 295.22 *Statement of supporting information.* Travel agents shall execute, and furnish to air carriers, Section A of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

REQUIREMENTS RELATING TO THE CHARTERING ORGANIZATION

§ 295.30 *Solicitation of charter participants.* As the following terms are defined in § 295.2 hereof, members of the charter group may be solicited only from among the *bona fide* members of an organization, club or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public.

21213

§ 295.31 *Passengers on charter flights.* Only *bona fide* members of the charterer, and their immediate families, may participate as passengers on a charter flight. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.** Where the

** Where the charter is based on employment in one entity or student status at a college, records of the corporation, agency or college will suffice to meet this requirement.

charterer is engaging round-trip transportation, one-way passengers shall not participate in the charter flight except as provided in § 295.14(f) hereof. When more than one round trip is contracted for, intermingling between flights or reforming of plane-load or one-half plane-load groups shall not be permitted and each such group must move as a unit in both directions.

§ 295.32 *Participation of immediate families in charter flights.* The immediate family of any *bona fide* member of a charter organization may participate in a charter flight.

§ 295.33 *Charter costs.*

(a) The costs of charter flights shall be prorated equally among all charter passengers and no charter passenger shall be allowed free transportation; except that (1) children under twelve years of age may be transported at a charge less than the equally prorated charge; (2) children under two years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants.

(21213, 21214)

Such costs may include a reasonable charge for compensation to members of the charter organization for actual labor and personal expenses incurred by them. Such charge shall

21214

not exceed $300 (or $500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect, from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall preclude a member of a chartering organization who is the carrier's agent from receiving a commission from the carrier (within the limits of section 295.15), or prevent any member of the charter group from accepting such advertising and good will items as are customarily extended to individually ticketed passengers (*e.g.*, a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in § 295.33(c) above, but exclusive of expenses for air transportation or land tours, exceed $750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers to be given to the carrier with the "Post Flight Report" required pursuant to § 295.34.

§ 295.34 *Statements of charges.*

(a) Any announcements or statements by the charterer to prospective charter participants of the anticipated in-

dividual charge for the charter shall clearly identify the portion of the charges to be separately paid for the air transportation, for the land tour, and for the administrative expenses of the charterer.

(b) Within 15 days after completion of each one-way or round-trip flight the charterer shall complete and supply to each charter participant and the air carrier involved a detailed report showing the charge per passenger transported and the charterer's total receipts and expenditures. The report shall be submitted in the form of, and contain such information including the above as more fully specified by, the "Transatlantic Charter—Post Flight Report" annexed hereto and made a part of this regulation.

§ 295.35 *Passenger manifests.*

(a) Prior to each one-way or round-trip flight a manifest shall be filed by the charterer with the air carrier showing the names and addresses of the persons to be transported and specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described). The manifest may include "stand-by" participants (by name, address and relationship to charterer).

21215

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger manifest as follows:

(1) A *bona fide* member of the chartering organization at the time the organization first gave notice to its members

of firm charter plans and will have been a *bona fide* member of the chartering organization for at least six months prior to the starting flight date. Specify on the passenger manifest as "(1) member."

(2) The spouse, dependent child or parent of a *bona fide* member who lives in such member's household. Specify on the passenger manifest as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) *Bona fide* members of entities consisting only of persons from a study group, or a college campus, or employed by a single Government agency, industrial plant, or mercantile company, or persons whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger manifest as "(3) special" or "(3) member" (where participants are from a study or campus group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the eastbound and westbound trips must be explained on the manifest.

(d) Attached to such manifest must be a *certification,* signed by a duly authorized representative of the charterer, reading:

"The attached list of persons includes every individual who may participate in the charter flight. Every person as identified on the attached list (1) was a *bona fide*

member of the chartering organization at the time the chartering organization first gave notice to its members of firm charter plans, and will have been a member for at least six months prior to the starting flight date, or (2) is a *bona fide* member of an entity consisting of (a) students and educational staff of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household, or

21216

(5) is a *bona fide* participant in a charter composed of participants in a formal academic study course abroad.

(Signature)

.....".

§ 295.36 *Statement of supporting information.* Charterers shall execute and furnish to air carriers Section B of Part II of the Statement of Supporting Information, at such time prior to flight as required by the carrier to afford it due time for review thereof.

SUBPART B—PROVISIONS RELATING TO SINGLE ENTITY CHARTERS

§ 295.39 *Applicability of subpart.* This subpart sets forth the special rules applicable to single entity charters.

(21216)

§ 295.40 *Tariffs to be on file.* The provisions of § 295.13 shall apply to charters under this subpart.

§ 295.41 *Terms of service.*

(a) The total charter price and other terms of service shall conform to those set forth in the applicable tariff filed in accordance herewith and the contract shall be for the entire capacity or one-half the capacity of one or more aircraft.

(b) The terms of service prescribed in § 295.14(b), (c) and (d) shall be applicable in the case of single entity charters.

§ 295.42 *Commissions paid to travel agents.* No direct air carrier shall pay a travel agent any commission in excess of five percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

Subpart C—Provisions Relating to Mixed Charters

§ 295.50 *Applicable rules.* The rules set forth in Subpart A hereof shall apply in the case of mixed charters.

Subpart D—Procedure for Advisory Opinion on the Eligibility of a Charterer

§ 295.60 *Advisory opinion.* An air carrier or prospective charterer may request an advisory opinion from the Bureau of Economic Regulation, Civil Aeronautics Board, Washington, D. C. 20428, regarding the eligibility of the prospec-

tive charterer to obtain charter service in accordance with this regulation. The Bureau's opinion will be based on the representations submitted and shall not be binding upon the Board in any proceeding in which the lawfulness of the respective charter may be in issue. Such representations should include as much of the information specified by Section B, Part II, of the Statement of Supporting Information as is available to the person requesting the advisory opinion.

Note: The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Members GURNEY and GILLILLAND dissented.

(21218)

21218

(See opposite) ☞

STATEMENT OF SUPPORTING INFORMATION*

PART I - To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: _____

2. Commencement date(s) of proposed flight(s): (a) Going _____ (b) Returning _____

3. Points to be included in proposed flight(s): (a) From _____ to _____ (b) Returning from _____ to _____ (c) Other stops required by charterer: _____ (d) Technical stops required by carrier: _____ (e) Planned routing: _____

4. (a) Type of aircraft to be used: _____ (b) Seating capacity: _____ (c) Number of persons to be transported: _____

5. (a) Total charter price: _____ (b) Does charter price conform to tariff on file with the Board? _____ (c) If pro rata or mixed charter, explain construction of charter price in relation to tariff on file with the Board (in case of mileage tariff, show mileage for each segment involved and indicate whether segment is live or ferry). _____

6. (a) Has the carrier paid, or does it contemplate the payment of any commissions, direct or indirect, in connection with the proposed flight? Yes ( ) No ( ) (b) If "yes," give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 3 percent of the total charter price, attach a statement justifying the higher amount under this regulation. _____

7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes ( ) No ( ) (b) if "yes," describe services or functions. _____

8. Name and address of charterer: _____

9. If charter is single entity, indicate purpose of flights: _____

10. On what date was the charter contract executed? _____

11. If the charter is pro rata, has a copy of Part 295 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer? Yes ( ) No ( )

PART II - To be completed for pro rata or mixed charters only:

Section A - To be supplied by travel agent, or, where none, by the air carrier or an affiliate under its control when either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements):

1. What specific services have been or will be provided by agent to charterer on a group basis? _____

2. What specific services have been or will be provided by agent to individual participants in the proposed charter? _____

3. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any member of the chartering organization in relation either to the proposed charter flight or any land tour? Yes ( ) No ( )

4. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes ( ) No ( ) If answer is "yes," explain: _____

*This must be retained by the air carrier for two years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

Verification[1]

STATE OF _____)
COUNTY OF _____) SS:

_____ (Name), being duly sworn, deposes and says that to the best of his knowledge and belief all the information presented in Part II, Section A of this Statement is true and correct.

Sworn to before me this day, the ___ of _____, 19_

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

_____
Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Warranty

I, _____ (Name), represent and warrant that I have acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.

_____
Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).

Section B - To be supplied by charterer:

1. Description of chartering organization, including its objectives and purposes: _____
2. What activities are sponsored by the chartering organization? _____
3. When was the organization founded? _____
4. Qualification or requirements for membership in organization and membership fee, if any: _____
5. Has there been any reference to prospective charter flights in soliciting new members for the chartering organization? Yes ( ) No ( )
6. If total membership in the chartering organization is less than 1,000, submit list showing names and addresses of members in good standing.[2] If total membership in the chartering organization is 1,000 or more, state where a list of members is available for inspection. _____
7. Attach list of prospective passengers, showing for each: Name, address, and whether a member of chartering organization or relationship to a member of chartering group. (Note: This is a list of prospective passengers and does not necessarily have to represent the passengers actually carried.)
8. Purpose of trip: _____
9. What are requirements for participation in charter? _____
10. How were prospective participants for charter solicited (attach any solicitation material)? _____

11. Will there be any participants in the charter flight other than (1) members of the chartering organization or (2) spouse, dependent children, and parents of a member of the chartering group, residing in the same household with the member? Yes ( ) No ( )

12. Will there be any members of the chartering organization participating in the charter who will have been members of the organization for a period of less than six months prior to flight date?[2] Yes ( ) No ( ) If answer is "yes," give names of participants who will not have been members for six months and justify (see §295.2(k)): _____

13. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in Part II, Section A, submit name, address, remuneration, and scope of activity: _____

14. Estimated receipts: _____ (Pro rata charge) X _____ (No. of passengers) = $_____ (Estimated receipts from charter).

Estimated receipts from other sources, if any: _____

Explain: _____

(a) Total receipts $_____

Estimated expenditures, including aircraft charter (separately itemize air transportation, land tour, and administrative expenses):

Item	Amount	Payable to

(b) Total expenditures $_____. Explain any difference between (a) and (b): _____

15. Are any of the expenses included in Item 14, above, to be paid to any members of the chartering organization? Yes ( ) No ( ) If "yes," state how much, to whom and for what services: _____

16. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip? Yes ( ) No ( ) If "yes," explain fully: _____

17. Will any person in the group (except children under two years) be transported without charge? Yes ( ) No ( )

18. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge is made for children under twelve years old? Yes ( ) No ( )

19. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction: _____

20. If more than one round trip is contracted for, will each group move as a unit in both directions? Yes ( ) No ( )

21. If transatlantic charters have been performed for organization during past 5 years, give dates and name of carrier performing charters: _____

22. Has a copy of Part 295, "Transatlantic Supplemental Air Transportation," of the Economic Regulations of the Civil Aeronautics Board been received by the charterer? Yes ( ) No ( )

21220

923a

Verification of Charterer[1]

STATE OF _____)
COUNTY OF _____) SS:

_____ (Name) and _____ (Name), being duly sworn, hereby separately depose and say that to the best of the knowledge and belief of each of them all the information

(21

in Part II, Section B, of this Statement is true and correct.

(Signature and title of officer - This should be the chief officer of the chartering organization except in the case of a school charter, in which case the verification must be by a school official not directly involved in charter.)

(Signature - person within organization in charge of charter arrangements.)

Sworn to before me this day, the ____ of _____, 19__

Sworn to before me this day, the ____ of _____, 19__

(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)

(Signature of person administering oath. Also, set forth here below the name, address and authority of such person.)

(SEAL)

(SEAL)

Warranty of Charterer

I, _____ and _____
Name Name

represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section B), and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.

(Signature and title of officer - This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by a school official not directly involved in charter.)

(Signature - person within organization in charge of charter arrangements.)

Verification of Employer[1/]

(To be furnished where eligibility to participate in charter is dependent upon employment by a particular entity.)

STATE OF _____)
COUNTY OF _____) SS:

_____, being duly sworn, deposes and says that to the best of his knowl-
Name
edge and belief solicitation for this charter has been confined to persons employed by _____ or persons in the immediate families of such employees. (Name of employer entity.)

Sworn to before me this day, the ____ of _____, 19__

(Signature and title of authorized official or employer.)

(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

Warranty of Air Carrier

To the best of my knowledge and belief all the information presented in this statement, including but not limited to, those parts verified by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 295 of the Board's Economic Regulations.[3/]

(Signature and title of authorized official of air carrier.)

1/ Whoever, having taken an oath before a competent --- person --- that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed,

is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. Title 18, U.S.C., §1621.

2/ Not applicable to college campus or study-group charters, nor to charters limited to employees of a single Government agency, industrial plant or mercantile company.

3/ Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to keep or preserve accounts, records and memoranda in the form and manner prescribed by the Board, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record or memorandum, shall be guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000. Title 49, U.S.C., §1472.

TRANSATLANTIC CHARTER POST FLIGHT REPORT

Instructions:

The charterer shall complete and file a report in this form with the air carrier within 15 days of each one-way or round-trip charter flight. A report in this form shall also be furnished each charter participant by the charterer within 15 days after completion of each one-way or round-trip charter flight.

1. Name of carrier: _____

2. Name of chartering organization: _____

3. Analysis of charterer's receipts:

   (a) _____ (No. of one-way psgrs.) X _____ (Charge per psgr.1/ (including amounts later refunded)) = _____

   (b) _____ (No. of round-trip psgrs.) X _____ (Charge per psgr.1/ (including amounts later refunded)) = _____

   (c) Receipts from other sources (explain) = _____

   (d) Total receipts [(a) + (b) + (c)] = _____

4. Analysis of charterer's expenditures:

Item of expenditure2/	Paid to3/	Amount

Total4/ = _____

Verification1/

STATE OF _____)
COUNTY OF _____) SS:

I, _____ (Name), being duly sworn, hereby depose and say that this report has been prepared by me or under my direction, that I have carefully examined it and that to the best of my knowledge and belief it is a complete and accurate statement, and a copy hereof has been distributed to each charter participant.

Sworn to before me this day, __ of _____, 19__ _____ (Signature of person in charge of charter arrangements)

_____
(Signature of person administering oath. Also, set forth here below the name, address, and authority of such person.)

(SEAL)

1/ If charter cost was not divided equally among all participants actually transported, indicate clearly the individual amounts collected and the number of passengers paying each such amount.

2/ As a separate item there should be listed here a total of all the amounts refunded to the charter participants; also list separately air transportation, land tour, and administrative expenses, and break down administrative expenses so as to show such items as postage and printing, and to show compensation for labor and personal expenses paid to any member of chartering organization.

3/ Disclose any relationship to chartering organization.

4/ If this item does not agree with item 3(d), submit an explanatory statement as to the reasons therefor. If the total expenditures (including among other items compensation to members of the chartering organization but exclusive of expenses for air transportation or land tours) exceed $750 per round trip, such expenditures shall be fully supported by vouchers submitted to and retained by the direct air carrier operating the charter. Such vouchers must cover all expenditures made on behalf of the chartering group including any expenditures for banquets, gifts, local transit, etc.

21909

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(FINANCIAL FITNESS OF OVERSEAS NATIONAL AIRWAYS, INC.)

Docket 11908 *et al.*

RECOMMENDED DECISION OF RALPH L. WISER,
HEARING EXAMINER

Served: Oct 8 1964

Upon:

Stephen D. Potts, 910—17th St., N. W., Washington, D. C. 20006, for Overseas National Airways, Inc.

Frederick A. Ballard, 912 American Security Bldg., Washington, D. C. 20005, and *James B. Franklin,* Box 48-535, International Airport Branch, Miami 48, Fla., for Airlift International, Inc. (formerly known as Riddle Airlines, Inc.)

Theodore I. Seamon, 700 Woodward Bldg., Washington, D. C. 20005, for Capitol Airways, Inc.

Ivan V. Kerno, 1201 Shoreham Bldg., Washington, D. C. 20005, for The Flying Tiger Line Inc.

Albert F. Beitel, 905 American Security Bldg., Washington, D. C. 20005, for Modern Air Transport, Inc.

Jerry W. Ryan, Pan American World Airways, Inc., Pan

(21909)

Am Bldg., 200 Park Ave., New York, N. Y. 10017, for Pan American World Airways, Inc.

Robert M. Lichtman, 850 Washington Bldg., Washington, D. C. 20005, for Saturn Airways, Inc.

Joel H. Fisher, 1001 Connecticut Ave., N. W., Washington, D. C. 20036, for Seaboard World Airlines, Inc.

Joseph F. Healy, Jr., 640 Shoreham Bldg., Washington, D. C. 20005, for Trans World Airlines, Inc.

Steward R. Carter, Jr., 330 "G" St., S. W., Washington, D. C. 20024, for United States Overseas Airlines, Inc.

Howard G. Feldman, Civil Aeronautics Board, Washington, D. C. 20428, for the Bureau of Economic Regulation.

Exceptions, if any, must be filed with the Docket Section of the Civil Aeronautics Board, Washington, D. C. 20428, and served upon all parties within 10 days after the date of service shown above. Briefs may be filed and served on all parties within 10 days after the date fixed for filing exceptions.

21910

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(FINANCIAL FITNESS OF OVERSEAS NATIONAL AIRWAYS, INC.)

Docket 11908 *et al.*

Overseas National found no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for that carrier, and its application must be denied.

Recommended that the Board assign for oral argument the question as to further procedure appropriate in connection with the Board's finding that three charter carriers are required.

Appearances:

Stephen D. Potts, Ramsay D. Potts, Jr., and *Chauncey H. Levy* for Overseas National Airways, Inc.

Lipman Redman, Frederick A. Ballard, R. J. Shortlidge, Jr., and *John W. Kern III* for Airlift International, Inc. (formerly known as Riddle Airlines, Inc.)

Theodore I. Seamon, for Capitol Airways, Inc.

Ivan V. Kerno and *Norman L. Meyers* for The Flying Tiger Line, Inc.

Albert F. Beitel for Modern Air Transport, Inc.

Jerry W. Ryan for Pan American World Airways, Inc.

(21910, 21911)

Robert M. Lichtman for Saturn Airways, Inc.

Joel H. Fisher for Seaboard World Airlines, Inc.

Edmund E. Harvey and *Joseph F. Healy, Jr.*, for Trans World Airlines, Inc.

Steward R. Carter, Jr., for United States Overseas Airlines, Inc.

Howard G. Feldman for the Bureau of Economic Regulation.

21911

RECOMMENDED DECISION OF RALPH L. WISER, HEARING EXAMINER

The matter for decision herein concerns the financial fitness of Overseas National Airways, Inc., to engage in transatlantic charter operations. On October 8, 1963, the Board reached its decision in the *Transatlantic Charter Investigation* and submitted it to the President for approval, pursuant to section 801 of the Federal Aviation Act of 1958, as amended. Overseas National was one of the three supplemental air carriers selected therein by the Board to receive certificates of public convenience and necessity authorizing transatlantic charter operations. However, the President on February 18, 1964, returned the decision for further evaluation of the award of a certificate to Overseas National. The other portions of the decision were approved and have become effective. Pursuant to the President's directive, the Board reopened the proceeding for further hearing to determine whether any developments since the Board's original decision have rendered Overseas National no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for

that carrier. Hearing has been held and briefs filed with the examiner. .

Overseas National contends that it is more financially fit than it was any of the three times the Board found it fit within the past 2 years, that it has gained financial strength by a clean start under an arrangement with creditors, that its financial strength has been enhanced by addition of new officers, that it has proposed a financially sound operation, that the initial capital to recommence operations will be available, and that it is as fit financially as many supple-

mental carriers found by the Board to be fit. The Flying Tiger Line Inc. contends that transatlantic charter operations are clearly vulnerable to financial unfitness and that Overseas National is bankrupt, its plan of arrangement remains to be approved, it conducts no operations, has no organization or operating staff, has no access to new money, and would still be insolvent if the proposed plan of arrangement were confirmed. Bureau counsel argues Overseas National to be unfit on substantially the same grounds as Flying Tiger and takes the position that the proceeding should be reopened for review of the need for a third carrier and to permit new applications and updating of the evidence supporting applications on file. Capitol Airways, Inc., opposes this latter recommendation and urges that in the event Overseas National is found financially unfit no new proceedings are required and no third carrier should be selected. Airlift International, Inc., Flying Tiger, and Seaboard World Airlines, Inc., submit that there is no issue herein concerning how the case should proceed if Overseas National is found financially unfit.

(21912, 21913)

The evidence adduced at the hearing shows that Overseas National is patently unable financially to engage in transatlantic charter air transportation under a certificate of public convenience and necessity at this time, and no financial plan has been established which would justify a conclusion that it can do so in the near future.

Overseas National instituted proceedings under section 322 of Chapter XI of the Bankruptcy Act by filing a petition in the District Court of the United States for the Eastern District of New York on October 28, 1963, in which it stated that it was insolvent and asserted that it intended

21913

to propose an arrangement pursuant to Chapter XI of the Bankruptcy Act. It attached to that petition a balance sheet as of October 4, 1963, showing assets of $747,342, liabilities of $2,088,535, and a deficit of $1,341,193.

Its summary of debts and assets submitted to the court with a certificate of its executive vice president, dated January 24, 1964, shows debts totaling $3,514,186 and assets totaling $527,093.

The carrier has since October 1963 been authorized by the court to continue to operate its business as a debtor in possession. However, it has not performed air transportation since the bankruptcy proceeding was started[1] and its operations have related primarily to maintaining or disposing of its assets. It has two employees (the assistant secretary and the assistant treasurer) and its facilities consist of office and warehouse space and an inventory of spare parts at John F. Kennedy International Airport. Thus,

[1] The last flight reported to the Board was conducted on October 4, 1963.

Overseas National does not have the going-concern status as an air carrier which might under some circumstances show ability to operate in spite of adverse financial statement showings. Accordingly, the cases are inapposite which it cites showing the Board to have found operating air carriers fit, willing, and able even though their balance sheet figures were unfavorable.[2]

21914

Overseas National's argument that it is more financially fit now than it was on three previous occasions in the past 2 years when the Board found it fit, based on the fact that the carrier at those times had a deficit net worth on its balance sheet, whereas, it contends, it would have a positive net worth under a proposed plan of arrangement, is rendered inapt by the record of financial failure following those findings.

A plan of arrangement has been proposed and has been accepted by a majority in the number and amount of the creditors, and Overseas National expects it to be confirmed by the court. This plan provides that priority tax and governmental agency claims shall be paid on confirmation, priority wage claims shall be paid 25 percent in cash on confirmation and the balance in 10 monthly installments, unsecured creditors' claims of $100 or less shall be paid 25 percent in full settlement on confirmation, and unsecured creditors' claims of more than $100 shall be paid 10 percent in full settlement (2½ percent in 12 months, 5 percent in 24 months, and 2½ percent in 30 months from confirmation).

---

[2] Orders E-18839, E-18868, E-18870, and E-18871, dated October 5, 1962.

(21914, 21915)

The applicant submits a proposed plan of operation based on confirmation of the plan of arrangement and on use of one to four DC-7CF aircraft in contract and charter operations over a 15-month period. This contemplates a total of 7,346 flight hours (1,428 contract, 4,950 foreign charter, 968 domestic charter), which are expected to generate revenues totaling $4,674,575 ($875,455 contract, $3,051,349 foreign charter, $747,771 domestic charter). Expenses are estimated

21915

at $4,192,448 ($3,637,704 direct operating expense, $554,744 indirect operating expense). Amortization of preoperating expense at $3,550 monthly (to provide for change over a 3-year period) would total $53,250. Payments to creditors under the proposed plan of arrangement would total $142,844. Under this forecast Overseas National would accrue a profit of $286,033 for the 15-month period if a 15-percent nonrevenue mileage were experienced in foreign charter operations and $62,555 in the event a 20-percent nonrevenue mileage in such operations were experienced.

The carrier would have new management under the plan of operations presented at the hearing. The chief executive officer would be Mr. Bernard J. Herkimer, who would be chairman of the board of directors and treasurer. His commercial aviation experience dates from 1956, when he became an employee of Aviation Financial Services, Inc., in which he rose to the position of executive vice president-treasurer. In 1963, he formed the B. J. Herkimer Company, specializing in financial services to the aviation industry. He has flown for approximately 20 years as a private pilot and is qualified for single- and multi-engine land aircraft. His business experience dates to the middle 1930's. Mr.

Herkimer owns Camaero, Inc., which is a creditor of Overseas National, claiming $1,060,000, which would be reduced to 10 percent under the plan of arrangement.

Mr. Herkimer would have effective control of Overseas National. It is contemplated that he would hold an option to purchase 49 percent of the 100,000 shares of stock of Overseas National at 1 cent per share. The other 51 percent would be deposited in escrow with the Creditors Com-

21916

mittee to assure that the plan of arrangement is carried out, and when released from this escrow agreement would be transferred to Mr. Herkimer as a voting trustee for 10 years. This agreement is contained in a draft which is in the hands of the present stockholders for signature.

Mr. Albert E. Blomquist would be vice president of sales and operations and a director. He has been a consulting transportation engineer since 1946 and worked in international airline operations and sales from 1949 to 1962. He provided management and technical assistance for the establishment of El Al Airlines over a 3-year period and provided basic tariff structures, sales advice, equipment studies, and operational advice for Icelandic Airlines between 1952 and 1962. Mr. Blomquist is now developing equipment and operating formulas for several short-haul and intrastate carriers. In 1945 and 1946 he was director of airport and facilities engineering for Eastern Air Lines, Inc. Between 1939 and 1944 he held positions as an aviation consulting engineer in business and government and served for 2 years as staff officer, U. S. Army Air Force, in charge of airborne planning and development of troop carrier activities.

(21916, 21917)

Mr. Howell T. Sawyer would be the secretary and a director. His business experience dates to his graduation from Yale University in 1920 and has included security sales, industrial and labor relations, management consulting, and personnel management. Since 1956 he has been account executive of Dewitt Conklin Organization, a financial and public relations firm.

21917

The only employees who were with Overseas National when it previously engaged in air transportation who would be regularly employed in the future would be Mr. R. E. Sizmur, assistant treasurer, and Clara D. Smith, assistant secretary.

Overseas National would use leased DC-7CF aircraft, the first two in use to be leased from Aero Rent, Inc., a corporation owned by Mr. Herkimer. These aircraft were formerly owned by Camaero, Inc., a corporation also owned by Mr. Herkimer,[3] and were modified for Overseas National prior to the receivership.

The applicant would obtain overhaul and maintenance service under contract. It has on hand or will receive with the aircraft a complement of overhaul and line spare parts necessary to maintain dependable operation.

The carrier submitted a *pro forma* balance sheet as of June 30, 1964, based on approval of the proposed plan of arrangement now before the referee in bankruptcy, showing as follows:

[3] The election of Mr. Herkimer and the lease of these aircraft would of course be subject to Board approval.

21918

ASSETS

Current Assets:			
Cash on Hand and in Bank		$ 72,215	
Restricted Cash and Receivables		11,000	
Accounts Receivable:			
U. S. Government	$18,279		
Government of Canada	70,208		
State of California	21,739		
Other	4,078	114,304	
Inventories		245,874	$443,393
Special Funds and Investments			10,760
Flight Equipment-Spare Engines			120,000
Deferred Charges			62,307
Contingent Assets			75,000
Total Assets			$711,460

LIABILITIES AND CAPITAL

Liabilities	$591,703
Common Stock	100,000
Surplus	19,757
Total Liabilities & Capital	$711,460

While this balance sheet states a net worth of $119,757, the statement of assets upon which it depends cannot be accepted. The Accounts Receivable items of $70,208 and $21,739 respectively shown as due from the Government of Canada and the State of California represent claims which are in dispute, with Canada contending that an offset elimi-

nates any liability and California disputing the amount. The $62,307 Deferred Charges item includes $36,000 which represents a payment to the Camaero corporation for two aircraft under a purchase contract on which Overseas National defaulted. Mr. Herkimer considers this payment to have been forfeited. The $120,000 entry under Flight Equipment-Spare Engines is also questionable, inasmuch as the ownership of these engines is disputed. The $75,000 Contingent Assets item is an estimate of the amount which Overseas National will be able to obtain from Douglas Aircraft Company, Inc., General Dynamics Corporation, and Intermediate

Credit Corporation as a result of their allegedly wrongful repossession of aircraft. Thus, a total of $32,947 of the asset items in this balance sheet are of very doubtful status, and the claim of a positive net worth has little support.

Much could be said from an accounting standpoint about the propriety and method of the showing of such contingent assets on the balance sheet. However, we are here looking at these items to evaluate their effect on the financial fitness of the carrier. It is solely in the realm of speculation whether any cash will be realized from the above claims. And also solely in the realm of speculation are questions as to the amount which would be obtained if the carrier should prevail and when this would happen. These claims are too frail to lend significant support to the claim of financial fitness.

Forgetting the state of the net worth account and attempting to ascertain how Overseas National could meet the cash needs which it would experience in commencing and main-

taining operations, the outlook is gloomy indeed. The company has some $83,000 in cash, which would about meet the cash needs for disbursement prerequisite to confirmation of the plan of arrangement, i.e., approximately $60,000 (between $55,000 and $66,000) for legal, accounting, and court fees relating to the Chapter XI proceeding, $11,949 for priority taxes and governmental claims, $10,541 for priority wage claims, and $1,344 for unsecured creditors with claims of $100 or less.

Overseas National offered testimony herein by its attorney in the Chapter XI proceeding that an action has been commenced against General Dynamics Corporation involv-

21920

ing approximately $350,000 and that it is his opinion that there is substantial merit to the cause of action and a good likelihood of success. Similarly, this attorney states that an action will be instituted against Intermediate Credit Corporation for $160,000 and that this has substantial merit and a good likelihood of success. These claims relate to the repossession of aircraft from Overseas National by these companies.

The carrier's exhibits presented in evidence include no precise showing as to the cash it would need to establish operations under a certificate. However, on cross-examination, one of its witnesses, the proposed vice president of sales and operations, testified that about $200,000 new cash would be required ($20,000 for new parts, $45,000 for preoperational expenses, and $130,000 to $140,000 as a cash reserve for the first 2 months of operations). On redirect examination, he indicated that about 35 percent of this could be handled by selecting short-term credit for items of operation such as fuel. Later, its intended chairman of the board

and treasurer testified on cross-examination that a substantial amount of this could be provided in credit, and mentioned one-half as the proportion. However, this testimony on such use of credit is in quite general terms. On brief, Overseas National argues that the cash requirement would be $110,000. It must be recognized that the proposed dependence on short-term credit arrangements and the minimum cushion for contingencies would result in quite a precarious financial situation. Overseas National contends that the problem in raising the needed money is in finding the most advantageous source. It relies primarily on an argument that it will obtain a substantial amount of cash

from the claim against General Dynamics Corporation, and to a lesser extent relies on expectations of cash from actions to be commenced against Douglas and D. B. Talmage & Associates. If these fail, it plans to seek other sources. However, the record contains no showing that any such other financing can be obtained.

It can be seen that Overseas National's financial fitness depends on (1) confirmation of the plan of arrangement, and (2) success in a law suit. The proposed plan of arrangement has not been confirmed by the court, in spite of the applicant's expectation in April 1964 that the confirmation would be entered no later than June 10, 1964. On the basis of this anticipation the Board's hearing was postponed for 2 months. Thus, while the applicant states that the requisite percentage of creditors has agreed to the plan and the referee has held several hearings, the fact remains that it has not received confirmation. Furthermore, even if the

plan were to be approved, there is nowhere near a sufficient showing of financial fitness. If it prevails in the claim against General Dynamics at the trial level, further litigation is an obvious possibility. The success of the law suit and the time of recovery in the event of success are too conjectural to justify a finding of financial fitness. Accordingly, the application of Overseas National must be denied.

In view of the lack of fitness of Overseas National, the Board is faced with the problem of the further action required to effectuate its finding of a need for three charter carriers. Bureau counsel, Capitol Airways, and Seaboard

have submitted contentions herein as to what should be done, including arguments as to whether the Board should or should not reopen on the question of the need for a third carrier. However, this is a matter which is beyond the strict confines of the portion of the proceeding covering Overseas National's fitness. It involves, *inter alia*, the portions of the petitions for reconsideration of the Board's decision (orders E-20530 and E-20531) filed by unsuccessful supplemental and cargo carriers requesting that the Board certificate them in lieu of Overseas National. These petitions were deferred for action on this point by order E-20776, of April 30, 1964. Some of the unsuccessful applicants participated as to Overseas National's fitness and some did not. There is no assurance that they have been fully heard as to the Board's future action concerning their own applications. Nevertheless, the matter should be placed in a posture to enable the Board to consider the problem as soon as feasible.

Under these circumstances, it is recommended that the Board assign the proceeding for oral argument on this ques-

tion at an early date, to be at the time of argument on the fitness of Overseas National, if such be held. This will bring the matter to determination more promptly than would further filings.

On the basis of the foregoing findings and conclusions and all the record, it is recommended that the Board find that:

1. Developments since the Board's original decision have rendered Overseas National no longer financially fit to conduct transatlantic charter operations authorized under the proposed certificate for that carrier,

2. The application of Overseas National should be denied.

3. The proceeding should be assigned for oral argument at an early date on the question of further procedure appropriate in connection with the Board's previous finding that three charter carriers are needed, to be at the time of argument on the financial fitness of Overseas National, if such be held.

It is recommended that the Board adopt an order in the form set forth in the appendix.

21924

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

(Financial Fitness of Overseas National Airways, Inc.)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the application of Overseas National Airways, Inc., be and it is denied; and

2. That this order shall become effective on the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

.....

22609

Order No. E-21966

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 30th day of March, 1965

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

ORDER

In its original opinion of October 8, 1963, in the *Transatlantic Charter Investigation*, the Board found that the public convenience and necessity require the certification of three carriers to operate transatlantic charter services, that the supplemental air carriers rather than the cargo carriers should be selected to provide the needed services, and that Capitol Airways, Inc., Saturn Airways, Inc., and Overseas National Airways, Inc., should be awarded certificates authorizing them to engage in transatlantic charter operations. The President approved the issuance of certificates to Capitol and Saturn, but advised the Board that it should give further consideration to the question of whether events that had occurred subsequent to the time

the Board adopted its opinion had rendered ONA no longer financially fit.

Pursuant to the President's directive, the Board reopened the *Investigation* for further proceedings on the limited issue of ONA's fitness.[1] Public hearings were held before Examiner Ralph L. Wiser, who issued a recommended decision in which he found that ONA is no longer financially fit to provide the transportation authorized by the proposed certificate, and that its application should be denied.

In the light of the examiner's findings, the Board requested that the parties on brief, in addition to covering the issue of ONA's fitness, address themselves to the question of the course of action the Board should follow in the

event ONA were found to be unfit.[2]

On November 24, 1964, ONA filed a motion requesting the Board to reopen the record and receive in evidence certain agreements, contracts, and arrangements relating to the refinancing of the carrier that were entered into

---

[1] Orders E-20530 and E-20531 issued on March 3, 1964.

[2] "Notice to All Parties," November 4, 1964. Specifically, the Board raised the following questions: (a) Whether the Board should consider the certification of some other supplemental air carrier or all-cargo carrier applicant, in lieu of ONA, on the present record without further hearing; (b) whether the Board should reopen the record for further hearing on the comparative qualifications of the remaining applicants; (c) whether, if the record were reopened, the Board should permit the filing of applications by supplemental carriers not now applicants in the case and consolidate them into the proceeding; and (d) whether the Board should reconsider its prior finding that the public convenience and necessity require the certification of a third transatlantic charter carrier in addition to Capitol and Saturn.

subsequent to the close of the hearing.[3] The Board deferred action on that motion until after oral argument.

The Board has received briefs and heard oral argument.

Upon consideration of the matters presented, we have concluded that the record in the proceeding should be reopened for further hearing on the fitness and comparative qualifications of all supplemental air carrier applicants in the proceeding (including ONA), and that any supplemental air carrier who is not now a party to the proceeding should be afforded an opportunity to file an application seeking its own certification as the third transatlantic carrier, and to request its consolidation into the proceeding.

We have further concluded that the reopened hearing should include reconsideration of the question of whether the public convenience and necessity require the certification of supplemental air carriers to provide transatlantic charter service in addition to Capitol and Saturn. We also conclude that the reopened hearing should not include reconsideration of the Board's prior finding that supplemental carriers, rather than all-cargo carriers, should be authorized to provide the service.

1. It is clear that on the record before us we could not find that ONA today meets the statutory test of fitness. The examiner, in his recommended decision, outlined in detail the evidence that leads to such a conclusion and it

---

[3] Bureau counsel filed an answer in support of the motion; Modern and World filed answers in opposition. Bureau counsel also filed a motion to reopen, but subsequently requested that its own motion be dismissed contemporaneously with final action on ONA's motion.

is unnecessary to comment on or add to the matters he set forth. ONA has presented nothing that seriously challenges the correctness of the examiner's findings, and, indeed, before the Board directed its oral argument to urging that the Board grant its motion to reopen and determine its financial fitness on the basis of the recent financing arrangements not now of record.[4] It is also clear that if the Board is to give further consideration to ONA's fitness there must be further proceedings in which the new matters relied on by the carrier can be subjected to examination in an evidentiary hearing.

2. Although we could reopen the record for further hearing limited to ONA's fitness in the light of such recent data as it might submit, we are convinced that the public interest requires a broader reopening.

The Board, in reaching its original decision in the *Transatlantic Charter Investigation*, was required, as it is in all route proceedings involving competing applications, not only to determine whether the individual applicants meet the statutory test of fitness, willingness, and ability, but also to select for certification from among the "fit" applicants the carrier or carriers best qualified to provide the services found to be required. On the first point, the lengthy proceedings that have been held establish that ONA on the present record is not fit and that if we are again to give consideration to its fitness, we must hold further hearings. We do not speculate on what the record in any further proceedings that might be held would estab-

[4] Although ONA filed exceptions to the examiner's recommended decision, these were largely conclusionary in nature. The carrier did not file a brief to the Board, but relied on its brief to the examiner.

lish as to ONA's present fitness. However, there obviously can be no assurance that the record would warrant a finding that ONA is now fit. Thus, a reopening limited to ONA's fitness would necessarily entail the risk that the carrier would be found unfit, which would require another round of proceedings of some type with respect to selection of any carrier needed to provide transatlantic charter service.

Equally important, even if the evidence were to establish that the carrier is now fit, the Board would nonetheless be faced with a situation on comparative fitness significantly different from that before it when it chose ONA for certification. In substantial part, the Board selected ONA because of its previous experience and historic participation in the transatlantic charter market. However, as a consequence of its financial difficulties, ONA has largely disbanded its organization, has not conducted a flight of any kind since October 3, 1963, and has devoted its efforts to conserving or disposing of its assets.[6]

22612

In view of the foregoing, we will reopen the proceeding and broaden the issues to make possible an evaluation of the current fitness and comparative qualifications of all supplemental carrier applicants in the proceeding. We need not decide whether we could select some applicant other than ONA on the present record without further hearings. A substantial period of time has elapsed since the original hearings were held, and we believe that the public interest will best be served by setting the reopened proceeding for further hearings before an examiner of the

[6] We are aware that the documents attached to ONA's motion indicate that the former president of ONA will be retained in that capacity. This does not affect the validity of the conclusion we have reached.

Board for the development of an up-to-date evidentiary record. Consistent with our objective of choosing for any transatlantic services found needed a supplemental carrier or carriers whose selection, on the basis of current data, will best serve the public interest, we will permit any supplemental carrier that is not now a party to the investigation to participate in the reopened proceeding and have its current qualifications evaluated along with those of the other applicants. The new matters alleged by ONA in support of its motion warrant affording that carrier the opportunity being accorded the other supplemental carriers to participate in the reopened proceeding and present evidence directed to establishing that it is now fit and should be selected.[6]

3. The same considerations lead us to reopen the issue of whether the public convenience and necessity require the certification of carriers in addition to Capitol and Saturn to provide transatlantic charter service. In view of the elapsed time since the original hearings and since the public interest requires reexamination of the question of choice of carrier, we believe that the public interest would best be served by bringing the record up to date on the public convenience and necessity issue. This will enable the Board to render its decision and submit its recommendation to the President on the basis of a record which is current in all respects.

On the other hand, we find no basis for reexamining our prior determination that the supplemental air carriers, rather than the all-cargo carriers, should be selected to provide transatlantic services. The choice as between the

[6] In its motion, ONA requested that the Board reopen the record and receive in evidence the documents attached to the motion. The admissibility of the documents ONA desires to offer is a matter that should be left for determination by the hearing examiner assigned to the case.

supplemental and all-cargo carriers was fully litigated by the parties and was carefully considered by the Board in reaching its decision. The Board's conclusion rested in major part on its policy determination that since Public Law 87-528 restricted the supplemental carriers to charter operations they should be chosen, in preference to the cargo carriers, to provide service in the transatlantic charter market. No new matters have been presented that, in our judgment, would warrant further examination of that determination.

22613

ACCORDINGLY, IT IS ORDERED:

1. That the record in the *Transatlantic Charter Investigation* be and hereby is reopened for further proceedings on (a) the current fitness and comparative qualifications for selection as transatlantic charter carriers of all supplemental air carriers (including ONA) who are now applicants in the proceeding; (b) whether the public convenience and necessity require the certification of supplemental air carriers to provide transatlantic charter service in addition to Capitol and Saturn;

2. That any supplemental air carrier who is not now an applicant in the proceeding be and hereby is granted permission to file on or before the prehearing conference in the reopened proceeding an application seeking its certification as a transatlantic charter carrier and a motion to consolidate such application into the reopened proceeding;

3. That the reopened proceeding be set for hearing before a hearing examiner of the Board at a time and place to be hereafter designated;

4. That the motion of ONA, except to the extent that the foregoing action constitutes a grant thereof, and the various requests for further consideration of the Board's prior determination that the supplemental air carriers rather than the cargo carriers should be chosen to provide transatlantic charter services, be and hereby are denied;

5. That the motion of Bureau Counsel be and hereby is dismissed;

6. That a copy of this order shall be served on all supplemental air carriers.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

MEMBER GILLILLAND COMMENTED AS FOLLOWS:

I concur that the record should be reopened for further proceedings for the reasons set forth in the Board's decision. Additionally, I would reexamine the issue of whether the all-cargo carriers should be selected to provide the proposed transatlantic services, if a need exists for such services.

/s/ WHITNEY GILLILLAND

VICE CHAIRMAN MURPHY FILED THE ATTACHED DISSENT.

22614

MURPHY, VICE CHAIRMAN, DISSENTING:

As a result of the then increasing transatlantic charter market, the Board, in 1955, issued its first transatlantic charter policy statement purporting to set forth a comprehensive regulatory approach to such operations. (20

C. A. B. 782) Transatlantic charters were authorized on an individual flight basis at that time for supplemental and all-cargo carriers in addition to the charter operations of the U. S. flag and foreign air carriers who hold transatlantic charter authority as part of their certificate and permit grants. As the volume of charters continued to increase, it became apparent that a formal proceeding to determine whether a more permanent authorization of transatlantic charter service by carriers not possessing certificated route authority was required and the Board instituted the instant proceeding to consider that question in November 1960. After full hearing and extensive proceedings, the Board in October 1963 concluded that the public convenience and necessity required certification of three additional carriers to operate transatlantic charter services, that supplemental carriers should be selected to provide the needed services and that Capitol, Saturn and

22615

Overseas National should be awarded transatlantic charter certificates.[1]

Now at this late stage, after having considered and decided the difficult and long-standing issues in this case, having engaged in a full rehearing as to ONA and against the background of continuing great growth in the transatlantic charter market, the Board has decided to reopen the entire question of need for any certificated transatlan-

[1] The President approved issuance of certificates to Capitol and Saturn but because of ONA's bankruptcy subsequent to submission of our decision to the President, he returned that issue for further Board review. Further proceedings on the ONA issue have been held and that matter as well as the petitions for reconsideration of the October 1963 decision are still pending and are ripe for final disposition.

tic charter operator or operators in addition to Saturn and Capitol. I perceive no reason whatsoever why the remaining issues in this already protracted and costly proceeding—essentially whether the Board should affirm on reconsideration its prior decision to certificate three supplementals to provide transatlantic charter service—should not be decided now. It is well to note that the majority's broadscale reopening on already decided public convenience and necessity issues is a far different matter from a grant of ONA's limited request for a second reopening on its fitness alone which I would not necessarily oppose. A favorable ruling on ONA's limited request, however, does not warrant the Board's present action which constitutes a virtual institution of a new case with new parties and a discarding of our recent findings of public convenience and necessity.

22616

This case should be brought to a conclusion.[2] There is no indication that the present record is inadequate or stale or that an updating would contribute any facts contradicting our prior conclusions.[3] I am convinced that further drawn-out and expensive hearings in this already comprehensive proceeding will serve no public interest purpose.

/s/ ROBERT T. MURPHY

---

[2] It should be recalled that in its February 6, 1962 order upholding seasonal exemptions authorizing supplemental and all-cargo carriers to provide transatlantic charter services while this case was in process, the Circuit Court of Appeals for the District of Columbia "urged that those proceedings be speedily concluded." 300 F. 2d 904.

[3] The number of charters is increasing; over 70% of the business is moving on foreign carriers, and four carriers have already asked the Board for special authority to provide transatlantic charter services this summer.

(22954)

22954

Order No. E-22255

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Issued under delegated authority
June 1, 1965

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

ORDER GRANTING AND DISMISSING PETITIONS FOR LEAVE TO INTERVENE

Petitions for leave to intervene in the above-entitled proceeding have been filed by the American Society of Travel Agents, Inc., Caledonian Airways (Prestwick) Ltd., Capitol Airways, Inc., and Saturn Airways, Inc.

The American Society of Travel Agents and Caledonian have indicated a lack of interest in the proceeding unless the matter of all-expense tour authority or other change of Part 295 of the Board's Economic Regulations should be at issue. The examiner ruled at the prehearing conference that changes in the terms, conditions, and limitations of transatlantic supplemental air transportation from that heretofore determined by the Board, including provision

of all-expense tours or any other amendment of Part 295 are not at issue under the Board's order reopening the proceeding.

Pursuant to authority duly delegated by the Board in its Regulations, 14 CFR 385.11, it is found, upon consideration of these petitions, that the intervention of Capitol Airways, Inc., and Saturn Airways, Inc., will be conducive to the ends of justice and will not unduly impede the Board's business.

ACCORDINGLY, IT IS ORDERED:

1. That the petitions for leave to intervene filed by the American Society of Travel Agents, Inc., and Caledonian Airways (Prestwick) Ltd., be and they hereby are dismissed.

2. That the petitions for leave to intervene filed by Capitol Airways, Inc., and Saturn Airways, Inc., be and they are hereby granted.

22955

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is

(22955, 27329)

filed, or the Board gives notice that it will review this order on its own motion.

By RALPH L. WISER
Hearing Examiner

HAROLD R. SANDERSON
Secretary

(SEAL)

27329

CAB Docket No. 11908

WORLD AIRWAYS EXHIBIT NO. R-1

• • • • •

D. *Average Length of Stay*

1. The average length of stay in Europe during 1964 was *41 days*. While this was down from the *45 day* average of 1963, reflecting the influence of 14-21 excursions, the average stay remains appreciably longer than the excursion fare allows.[5]

[5] The Department of Commerce does not isolate the length of stay of air passengers as distinguished from ship passengers. However, over 82.7% of all passengers went via air.

PERCENTAGE DISTRIBUTION OF PASSPORT RECIPIENTS INDICATING EUROPE AS THEIR FIRST AREA DESTINATION FOR MAJOR METROPOLITAN AREAS - 1963 AND 1964

Residence	1964 Total	1964 Europe	1964 % Europe of Total	1963 Total	1963 Europe	1963 % Europe of Total
TOTAL PASSPORT RECIPIENTS	1,133,228	864,598	76.3	1,055,504	794,964	75.3
NEW YORK CONSOLIDATED AREA						
NEW YORK CITY: AIR & SHIP	221,710	180,100	81.2	217,170	175,960	81.0
Air	201,510	162,670	80.7	183,230	145,780	79.6
NEWARK: AIR & SHIP	29,810	25,460	85.4	39,880	33,120	83.0
Air	26,880	22,720	84.5	32,820	26,620	81.1
PATTERSON; CLIFTON-Passaic: AIR & SHIP	4,150	3,610	87.0	4,030	3,190	79.2
Air	3,740	3,230	86.4	3,250	2,590	79.7
LOS ANGELES-LONG BEACH: AIR & SHIP	71,080	48,220	67.8	74,310	48,280	65.0
Air	64,820	43,820	67.6	63,360	40,640	64.1
CHICAGO: AIR & SHIP	57,900	48,260	83.4	52,380	42,430	81.0
Air	52,480	43,340	82.6	44,600	35,390	79.3
WASHINGTON,D.C.: AIR & SHIP	37,260	27,030	72.5	41,350	29,030	70.2
Air	33,570	24,010	71.5	35,750	24,340	68.1
BOSTON: AIR & SHIP	25,720	22,090	85.9	36,490	30,990	84.9
Air	22,980	19,570	85.2	30,190	25,230	83.6
SAN FRANCISCO-OAKLAND: AIR & SHIP	29,510	17,340	58.8	35.340	21,200	60.0
Air	26,460	15,350	58.0	29,480	17,440	59.2
DETROIT: AIR & SHIP	24,990	20,510	82.1	21,610	17,890	82.8
Air	22,840	18,550	81.2	18,670	15,200	81.4
PHILADELPHIA: AIR & SHIP	19,670	16,180	82.3	15,400	12,770	82.9
Air	17,730	14,460	81.5	12,520	10,150	81.1
MILWAUKEE: AIR & SHIP	14,580	11,820	81.1	10,540	8,340	79.1
Air	13,150	10,550	80.2	8,860	6,900	77.9
MINNEAPOLIS-ST. PAUL: AIR & SHIP	12,700	10,010	78.8	12,690	9,930	78.3
Air	11,330	8,900	78.6	10,830	8,320	76.8
SEATTLE: AIR & SHIP	10,850	7,590	70.0	11,470	7,520	65.6
Air	9,650	6,650	68.9	9,700	6,260	64.5

27252

957a

(27252)

PERCENTAGE DISTRIBUTION OF PASSPORT RECIPIENTS INDICATING EUROPE AS THEIR FIRST AREA DESTINATION FOR MAJOR METROPOLITAN AREAS - 1963 AND 1964

Residence	1964 Total	1964 Europe	1964 % Europe of Total	1963 Total	1963 Europe	1963 % Europe of Total
DALLAS: AIR & SHIP	4,890	3,500	71.6	4,900	3,480	71.0
Air	4,600	3,270	71.1	4,420	3,090	69.9
BUFFALO: AIR & SHIP	4,780	4,010	83.9	2,480	1,880	75.8
Air	4,210	3,520	83.6	2,090	1,540	
SAN DIEGO: AIR & SHIP	4,630	2,610	56.4	3,470	1,860	73.7
Air	4,220	2,390	56.6	2,910	1,580	54.3
CINCINNATI: AIR & SHIP	4,200	3,380	80.5	4,030	3,150	78.2
Air	3,760	2,970	76.3	3,380	2,610	77.2
ST. LOUIS: AIR & SHIP	5,110	4,000	78.3	4,810	3,730	77.5
Air	4,510	3,450	76.5	3,820	2,880	75.4
KANSAS CITY: AIR & SHIP	6,260	4,790	76.5	8,820	6,430	72.9
Air	5,700	4,300	75.4	7,750	5,550	71.6
ATLANTA: AIR & SHIP	3,750	2,910	77.6	3,910	2,990	76.5
Air	3,220	2,380	73.9	3,210	2,360	73.5
NEW ORLEANS: AIR & SHIP	3,480	2,240	64.4	3,470	2,300	66.3
Air	3,170	1,980	62.5	2,910	1,810	63.2

Source: U.S. Dept. of State, Bureau of Security and Consular Affairs, Passport Office.

(27253)

27253

958a

27352

WORLD AIRWAYS EXHIBIT NO. R-7

ONLY 15% OF THE TOTAL TRANSATLANTIC TRAFFIC WOULD BE LIKELY TO USE THE ITINERARIES SHOWN IN PA-73

Number of European Countries Visited by U. S. Resident Transatlantic Air Passengers—1962

(Rebuttal to PA-73)

Number of Countries Visited	Total Passengers		
	Number in Sample	Percent of Total	Cumulative Percent
1	447	21.2	100.0
2	396	18.9	78.7
3	289	13.7	59.9
4	302	14.3	46.2
5	229	10.9	31.9
6 (PA-73 Example 1)	166	7.9	21.0
7 (PA-73 Example 2)	144	6.8	13.1
8	71	3.4	6.3
9	30	1.4	2.9
10	13	.6	1.5
11	5	.2	.9
12	13	.6	.7
13	3	.1	.1
Total	2,108	100.0	
Average No. of Countries Visited	3.6		

Source: PA #477, Docket #13577.

Order No. E-22686

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 23rd day of September, 1965

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

ORDER

In its original opinion of October 8, 1963,[1] in this case, the Board determined to award transatlantic charter certificates to Capitol Airways, Inc. (Capitol), Saturn Airways, Inc. (Saturn), and Overseas National Airways, Inc. (ONA). At the same time, the Board denied various other applications, including requests for authority to charter to tour operators conducting all-expense tours. On February 18, 1964, the President approved the Board's decision only with respect to the award of transatlantic charter certificates to Capitol and Saturn, and he requested that the

[1] See Appendix A to Orders E-20530 and E-20531.

Board make a further evaluation of the fitness of ONA.[2] The President did not dispose of the Board's denial of the various other requests in the case, including the issue of all-expense tours. Accordingly, the Board treated as premature requests for reconsideration of its denial of all-expense tour authority (Order E-20776, April 30, 1964).

28300

Two years have now passed since the Board's original determination to deny all-expense tour authority to Capitol and Saturn. In the interval there have been significant changes in the facts relating to the financial position of the U. S. flag carriers, as well as major improvements in transatlantic traffic, both of which may have an important bearing on the all-expense tour issue. In addition, the Board will shortly have presented to it, in the *Supplemental Air Service Proceeding,* Docket 13795 *et al.,* the question of whether supplemental carriers should be granted all-expense tour authority in all markets other than the transatlantic market. Therefore, the Board now deems it appropriate to reexamine the question of whether the supplemental air carriers certificated to serve the transatlantic passenger market should be awarded all-expense tour authority.

---

[2] Pursuant to the President's directive the Board reopened the proceeding on the limited issue of ONA's fitness. (Orders E-20530 and E-20531 issued on March 3, 1964). A full evidentiary hearing was held and the Board then, for the reasons set forth in Order E-21966, March 30, 1965 expanded the issues and reopened the record for further proceedings on the current fitness and comparative qualifications of all supplemental carriers who are applicants for transatlantic charter authority in the case and to determine whether the public convenience and necessity require certification of supplemental air carriers to provide transatlantic charter service in addition to Capitol and Saturn. This proceeding is currently in process, hearings having recently been completed.

(28300, 28301)

In order to facilitate decision on this matter the Board will accept briefs from the interested parties and an oral argument will subsequently be held. The briefs should, in particular, include discussion of the following matters:

1. Is the present record adequate for determining the all-expense tour issue or must the Board reopen the record to take further evidence?

2. May the Board, by incorporation by reference, official notice, or other methods lawfully utilize the evidentiary record in the *Supplemental Air Service Proceeding,* Docket 13795 *et al.,* and, if so, should the Board do so for the purpose of reaching a decision in this reopened proceeding?

ACCORDINGLY IT IS ORDERED THAT:

1. The *Transatlantic Charter Investigation,* Docket 11908 *et al.* be and it hereby is reopened to determine whether the public convenience and necessity require the grant of all-expense tour authority to Capitol, Saturn, and any supplemental air carrier subsequently certificated in the reopened proceeding now in progress;[3]

2. Briefs to the Board in this reopened proceeding shall be filed on October 8, 1965;

3. An oral argument in this reopened proceeding shall be held at a time and a place to be hereafter designated; and

28301

4. This order shall be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

[3] See Fn. 1, *Supra.*

28389

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C. 20428

Docket No. 11908, *et al.*

In the Matter of the

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

BRIEF OF PAN AMERICAN WORLD AIRWAYS, INC. PURSUANT TO ORDER E-22686

HUBERT A. SCHNEIDER
ELIHU SCHOTT
Attorneys for
Pan American World Airways, Inc.
Pan Am Building
New York, New York 10017

Dated: October 7, 1965
New York, New York

(28390)

28390

TABLE OF CONTENTS

Page

PART I.—THE BOARD MAY NOT LAWFULLY AUTHORIZE SUPPLEMENTAL AIR CARRIERS TO PROVIDE ALL-EXPENSE TOUR CHARTERS TO TRAVEL AGENTS ..... 2.

A. "Charters" by supplementals to travel agents who sell individual space to the general public as part of an all-expense tour, are not valid "charter trips in air transportation" under Section 101(33) of the Act ..... 4.

1. Any air service wherein individual space is sold to the general public violates the standards for a valid "charter" established by the Court of Appeals for the District of Columbia in the recent *American* case ..... 4.

2. The legislative history of Public Law 87-528 demonstrates a specific Congressional intent to withhold any authority from the supplemental air carriers permitting all-expense tour charters to travel agents ..... 8.

B. "Charters" by supplemental air carriers to travel agents who, in turn, simply sell to the public at large the same type of all-expense tours presently offered and vigorously promoted by both travel agents and scheduled carriers, are not "supplemental air transportation" under Section 101(33) of the Act ..... 11.

Page

C. All-expense tours constitute a "special service" and are thus outside the authority which may be granted to supplemental air carriers ..... 15.

28391

PART II.—THE PRESIDENT APPROVED THE BOARD'S DENIAL OF AUTHORITY TO CHARTER TO TOUR OPERATORS ..... 19.

PART III.—THE PRESENT RECORD FULLY SUPPORTS THE BOARD'S DENIAL OF ALL-EXPENSE TOUR AUTHORITY AND THE BOARD SHOULD NOT REOPEN THE RECORD TO TAKE FURTHER EVIDENCE ..... 23.

PART IV.—THE BOARD SHOULD NOT AND MAY NOT UTILIZE THE EVIDENTIARY RECORD IN THE SUPPLEMENTAL CASE ..... 26.

CONCLUSION ..... 28.

CERTIFICATE OF SERVICE ..... 29.

28415

* * * * *

The second portion of the Board's question—"must the Board reopen the record to take further evidence"—is somewhat obscure. In the light of the foregoing discussion, it is clear that there is no deficiency of evidence to support the determination which the President has already approved. On the other hand, should the Board decide to reexamine its

conclusion on that issue, it certainly must have further evidence before it could justify a different recommendation to the President. Further, it must have evidence on both sides of the question. For example:

a) Events subsequent to the Board's first decision have made clear the serious foreign relations implications of, and complications from, any authorization of supplemental air carriers to operate all-expense tours, but these facts are not in the record.

b) The Board must have full and up-to-date evidence on the effect of any such award on the United States balance of payments problem—a subject which was not even considered in the earlier hearings or decision, because it had not yet been recognized as a critical national problem.

28416

c) The Board must also have evidence on the continued reductions in fares on scheduled services, and on the adverse effect on that continuing trend (and on the well-being of the scheduled carriers) of the massive diversion threatened by authorizing supplemental air carriers to provide all-expense tours.

d) To the extent that any alleged "need" of the supplemental air carriers may be considered relevant, the Board could not grant them all-expense tour authority without further evidence on their high profits and excellent financial condition.

These subjects, we should add, are only illustrative.

We urge the Board to deny the petitions for reconsideration and close out this issue in this proceeding once and for

all. But if it should determine to reexamine it further, we believe it would be a mistake, and an abuse of discretion, to do so by reopening the record in this proceeding.

The Board may not be fully aware of how very complex and unwieldy this proceeding and its record have become. There have already been three separate hearings. Only the first of these, concluded in April 1962, took evidence on the all-expense tour issue. Some of the original applicants did not even petition for reconsideration of the denial of all applications for such authority. Later admitted applicants had not even been heard on this issue. The record itself is massive and disconnected. Indeed, the point has been reached where it is mechanically and physically difficult to search the record, or even to refer to it. The transcript of

28417

oral testimony in *each* of the three separate hearing phases begins with page 1—for a total of 5,346 pages. There are thousands of pages of exhibits, in dozens of scattered volumes. Much of this enormous record relates to issues which have already been finally decided, or to applicants no longer in the case.

Clearly, if the Board should conclude that it is now appropriate at this late stage to reexamine the question of whether the supplemental air carriers certificated to serve the transatlantic passenger market should be awarded all-expense tour authority, it should first close out this proceeding and institute a new one in which to conduct such a reexamination.

* * * * *

(28442)

28442

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON 25, D. C.

Docket 11908 *et al.*

In the matter of the

REOPENED TRANSATLANTIC
CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

BRIEF OF TRANS WORLD AIRLINES, INC. TO THE CIVIL AERONAUTICS BOARD

Chadbourne, Parke, Whiteside & Wolff
Attorneys for
Trans World Airlines, Inc.
25 Broadway
New York, N. Y. 10004

Edmund E. Harvey,
Joseph F. Healy, Jr.,
Of Counsel.

Dated: October 8, 1965

28443

INDEX

		Page
I.	INTRODUCTION	1
II.	THE BOARD MAY NOT LAWFULLY AWARD ALL-EXPENSE TOUR AUTHORITY TO SUPPLEMENTAL AIR CARRIERS	2
III.	THE PRESENT RECORD IS INADEQUATE FOR ANY MEANINGFUL RE-EVALUATION OF THE BOARD'S ORIGINAL DETERMINATION THAT ALL-EXPENSE TOUR AUTHORITY SHOULD BE DENIED	6
	1. The possible international problems arising from such a major expansion of the authority held by the U. S. transatlantic charter carriers	10
	2. The possible adverse effect on the U. S. balance of payments position of the authorization of transatlantic all-expense tour charters	11
	3. The travel agent's role as an indirect air carrier in the promotion and sale of all-expense tours and the need for authority from, and regulation by, the Board in this area	12
IV.	THE BOARD MAY NOT UTILIZE THE EVIDENTIARY RECORD OF THE SUPPLEMENTAL AIR SERVICE PROCEEDING IN THIS CASE	13
	CONCLUSION	15

28470

* * * * *

TWA submits that if there is any need at all to reexamine the earlier conclusion of both the Board and the Examiner who heard the evidence, and if this is to be done two full years after the Board reached its original conclusion and some three years after the close of the evidentiary record (which, in turn, consists of facts and data relating to yet an earlier period), then there must be a presumption that the present record will be inadequate for any fair or meaningful re-evaluation of the question. Even assuming that the "present record" here includes all of the "traffic, costs, revenue, and other information typically stipulated or noticed by the Board in route proceedings," it has only recently been held that "further hearings are required to adequately assess the full significance of these data." (*Transpacific Route Case,* Order E-22625, September 3, 1965, pp. 2-3). Consistency and sound procedure demand the same results here.

As the Board further noted in its *Transpacific* order (following an extended discussion of the mass of stipulated data and the possible interpretation thereof):

> "The full import of these and other matters, however, could in our judgment only be soundly decided after

28471

> further evidentiary hearings at which the parties would have full opportunity to present evidence and cross examine. We conclude, therefore, that the record in the proceeding should be reopened for further evidentiary hearings based on the changes in fact which

have occurred and the need to bring the evidentiary record up to date." (Order E-22625, pp. 7-8)

Nor is such action required merely in the sound exercise of the Board's discretion; the courts have held that if the Board is to open the door to new data, it must take a full look and allow the affected parties an opportunity to rebut and explain the more recent developments. *Northeast Airlines* v. *CAB*, 345 F.2d 484 (1st Cir. 1965).

The reopening of cases for further evidentiary hearings have been common. In addition to the *Transpacific Route Case*, such a reopening was ordered following judicial remand of certain portions of the *New England Regional Airport Investigation* (see Order E-22339, June 22, 1965) and following the above-cited remand by the First Circuit of the *New York-Florida Renewal Case* (see Order E-22084, April 26, 1965). The same procedure was earlier followed upon remand of portions of the decision in *Southern Transcontinental Service Case* (see Order E-20129, October 28, 1963). And even where a full rehearing on all issues has not been ordered, the Board has considered it necessary to reopen the record for evidentiary hearings limited to new factual allegations which have come to its attention

(see *Pacific Northwest Local Service Case*, 29 C.A.B. 660, 678-79 (1959)).

Perhaps the most compelling precedent of all for the position that further proceedings are needed on the all-expense tour issue is the fact that the Board itself, earlier in this very case, deemed it necessary to order further evidentiary hearings as part of its reexamination of an-

(28472, 28473)

other aspect of the original decision (Order E-21966, March 30, 1965, p. 4):

> "We need not decide whether we could select some applicant other than ONA on the present record without further hearings. A substantial period of time has elapsed since the original hearings were held, and we believe that the public interest will best be served by setting the reopened proceedings for further hearings before an examiner of the Board for development of an up-to-date evidentiary record. . . .
>
> ". . . In view of the elapsed time since the original hearings and since the public interest requires re-examination of the question of choice of carrier, we believe that the public interest would best be served by bringing the record up to date on the public convenience and necessity issue. This will enable the Board to render its decision and submit its recommendation to the President on the basis of a record which is current in all respects."

These same considerations obviously apply to the all-expense tour issue and it would be completely arbitrary for the Board to proceed in a different manner with respect thereto.

Quite apart from the matter of the stale nature of the evidentiary record, there are several important areas which must be thoroughly explored if the Board if to give further serious consideration to the authorization of all-

expense tour charters. These include:

1. *The possible international problems arising from such a major expansion of the authority held by the U. S. trans-*

atlantic charter carriers. The Bureau of Economic Regulation has adverted to the growing difficulties encountered with foreign governments in the matter of landing and up-lift rights for charter services, as well as other restrictive practice such as their refusal to permit split charters, their refusal to allow charter flights which do not comply with IATA regulations (even though they comply with Part 295), and so forth.*

While the Bureau stated in its brief to the Examiner in the *Reopened Transatlantic Charter* case that "[t]o deliberately ignore the international problems relating to such certification is to abdicate a primary Board function as advisor to the President", it failed to rise to the obvious implication of its position and suggest that a full scale exploration of these matters is required. Such an evidentiary investigation will certainly be required here if the President is to be adequately informed of the implications

28474

of any all-expense tour authorization proposed.

Matters of this sort are commonly considered in the course of international route proceedings—often through the medium of an executive session. In fact, the *reopening* of a proceeding for full scale hearings devoted expressly to matters affecting international relations was ordered by the Board in the *Transpacific Route Case,* 34 C.A.B. 106, 109-110 (1961). The same action can and should be taken here.

---

* Brief of the Bureau of Economic Regulation to the Examiner, filed in the *Reopened Transatlantic Charter Investigation* on September 13, 1965, pp. 36-38; see also Brief of the Bureau of Economic Regulation to the Civil Aeronautics Board, filed in the *Supplemental Air Service Proceeding* on September 27, 1965, pp. 10-12.

(28474, 28475)

2. *The possible adverse effect on the U.S. balance of payments position of the authorization of transatlantic all-expense tour charters.* The efforts to alleviate the balance of payments deficit through such devices as the "Discover America" program are well known. Less well known —indeed, not established at all on this record—is the effect that all-expense tour charters across the Atlantic would have on the gold flow problem. Proponents of all-expense tour charters will no doubt urge that they will generate substantial new low-cost air travel. If this is so, then the balance of payments will be adversely affected since, as is shown by the recent CAB staff study "The Impact of the Balance of Payments of the Air Transport and Aircraft Industries", travel abroad by U.S. residents always contributes to the payments deficit whether or not U.S.-flag or foreign-flag carriers are used. The extent of this ad-

28475

dition to the total U.S. deficit can only be determined in the course of an evidentiary hearing on the matter.

3. *The travel agent's role as an indirect air carrier in the promotion and sale of all-expense tours and the need for authority from, and regulation by, the Board in this area.* The record in this case is totally devoid of any evidence on the vital question of how, when and where the travel agent, as the principal who would organize, promote and sell these tours to the public, is to offer and perform this service. And there clearly is no basis in the record for any grant of the necessary authorization for these agents to act as indirect air carriers; there are, of course, no applications for such authority being heard in this case. The rule making proceeding in Docket 15777

(SPDR-6) cannot supply this deficiency for the obvious reason, among others, that it does not even purport to apply to international air transportation. Since an all-expense tour charter program is an integrated whole involving the supplemental air carrier, on the one hand, and the travel agent, on the other, the issues raised thereby must properly be evaluated in a single proceeding. Nothing in the present record would even remotely permit this to be done here.

Thus we see that in addition to bringing the old record up to date, there are matters of fundamental importance

which must first be explored in an evidentiary proceeding if the Board is to have an adequate record upon which to base a determination as to whether the supplemental air carriers certificated in the transatlantic passenger market should also be awarded all-expense tour authority.

(28743)

28743

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

ERRATA SHEET

to RECOMMENDED DECISION SERVED DECEMBER 22, 1965

The following changes should be made in the above-referenced recommended decision:

Page	*Line*	*Correction*
5	6th line	Change "$20,751,000" to "$21,751,000".
5	10th line	Change "September" to "October".
7	3d line	Change "5,547" to "15,547".
7	8th line	Change "18,744" to "18,474".
10	6th line from bottom of page	Change "*from* that of 1964" to "*below* that of 1964"
11	8th line from bottom of page	Change "12,664" to "12,264".
12	12th line	Change "February *15*" to "February *14*".

Page	*Line*	*Correction*
13	14th line	Change "$11 million" to "$17 million".
16	3d line	Change "753,000" to "753,500".
18	12th line	Delete "eastbound".
19	9th line	After "total", insert "traffic".
24	14th line	At end of line, delete comma.
26	footnote 21, 2d sentence	Change "24.4%" to "26.4%".
27	9th line	Change "8" to "9".
27	10th line	Change "9" to "10".
27	4th line from bottom of page	Change "$236,045" to "$206,914".

28744

27	5th line from bottom of page	Delete "transport".
31	12th line	Change "Ernest" to "Emmet".
31	next-to-last line	Change "$374,000" to "$374,500".
32	5th line	Change "Douglas" to "Greyhound".
32	4th line from bottom of page	Change "$4,851,000" to "$4,851,599".
33	1st line	Change "DC-8F-54" to "DC-8F".
34	next-to-last line	Change "$178,426" to "$177,334".
35	next-to-last line	After "75", insert "percent".

(28744)

Page	*Line*	*Correction*
38	17th line	Change "$7,928,408" to "$7,935,730".
40	11th line	Insert "previously" at beginning of line.
A-8	Under "TIA"	Change No. of revenue miles from "1,626,540" to "1,622,540".
A-9	Under "USOA"	After total operating expense and net operating profit figures, add "[3]".
A-9	Bottom of page	*Add footnote*: "[3] This includes an allowance for USOA's estimate of $80,000 "other income. The carrier also expects $100,000 income from a wholly owned subsidiary, making its estimated gross income a total of $396,291."
A-12	Last line	After "Board", add "and exhibits of ONA and USOA".

/s/ RALPH L. WISER

Ralph L. Wiser
Hearing Examiner

January 11, 1966

28748

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

RECOMMENDED DECISION OF RALPH L. WISER,
HEARING EXAMINER

Served: 22 Dec 1965

Upon:

Robert M. Beckman, 703 Ring Bldg., Washington, D. C. 20036, for American Flyers Airline Corporation.

Theodore I. Seamon, 700 Woodward Bldg., Washington, D. C. 20005, for Capitol Airways, Inc.

Albert F. Beitel, 905 American Security Bldg., Washington, D. C. 20005, for Modern Air Transport, Inc.

Howard S. Boros, 711—14th St., N. W., Washington, D. C. 20005, for Overseas National Airways, Inc.

David L. Steege, Pan American World Airways, Inc., Pan Am Bldg., 200 Park Ave., New York, N. Y. 10017, for Pan American World Airways, Inc.

Robert M. Lichtman, 1000 Ring Bldg., Washington, D. C. 20036, for Saturn Airways, Inc.

Clayton L. Burwell, 720 Federal Bar Bldg., 1815 "H" St., N. W., Washington, D. C. 20006, for Trans International Airlines, Inc.

(28748, 28749)

Edmund Harvey, Chadbourne, Parke, Whiteside & Wolff, 25 Broadway, New York, N. Y. 10004, for Trans World Airlines, Inc.

Chapman, Friedman, Shea, Clubb and Duff, Pennsylvania Bldg., Washington, D. C. 20004, for United States Overseas Airlines, Inc.

Raymond J. Rasenberger, 888—17th St., N. W., Washington, D. C. 20004, for World Airways, Inc.

James H. French, 1625 "K" St., N. W., Washington, D. C. 20006, for Zantop Air Transport, Inc.

James Lawrence Smith, Civil Aeronautics Board, Washington, D. C. 20428, for the Bureau of Operating Rights (formerly Bureau of Economic Regulation).

John A. Wallace, The Experiment in International Living, Putney, Vermont, for The Experiment in International Living.

Exceptions, if any, must be filed with the Docket Section of the Civil Aeronautics Board, Washington, D. C. 20428, and served upon all parties within 10 days of service shown above. Briefs may be filed and served on all parties within 20 days after the date fixed for filing exceptions.

28749

Appearances:

Robert M. Beckman and *Louis P. Haffer* for American Flyers Airline Corporation.

Theodore I. Seamon and *Lawrence D. Wasko* for Capitol Airways, Inc.

Albert F. Beitel and *William A. Wildhack, Jr.*, for Modern Air Transport, Inc.

C. Booker Powell, Stephen D. Potts, and *Howard S. Boros* for Overseas National Airways, Inc.

Jerry W. Ryan and *David L. Steege* for Pan American World Airways, Inc.

Robert M. Lichtman for Saturn Airways, Inc.

Clayton L. Burwell and *Walter D. Hansen* for Trans International Airlines, Inc.

Joseph Healy, Jr., Edmund Harvey, and *John S. Samuels* for Trans World Airlines, Inc.

Theodore P. Gerth, Judah Best, Albert A. Dorn, John J. Klak, Arnold J. Rotman, and *Chapman, Friedman, Shea, Clubb and Duff* for United States Overseas Airlines, Inc.

Jerrold Scoutt, Jr., and *Raymond J. Rasenberger* for World Airways, Inc.

James H. French, Robert J. Wilson, and *George C. Davis* for Zantop Air Transport, Inc.

James Lawrence Smith and *Howard G. Feldman* for the Bureau of Operating Rights (formerly Bureau of Economic Regulation).

John A. Wallace for The Experiment in International Living.

28750

CONTENTS

Subject	*Page*
Preliminary statement	1
Positions of the parties	3
Characteristics of the transatlantic charter market	4
The demand for jet aircraft and the rejection of piston aircraft	5
Operations of Part 295 carriers	7
Adequacy of presently authorized service	7

(28750, 28751)

Subject	*Page*
The future transatlantic charter market	16
Effect of additional services on existing carriers	20
The balance of payments	23
Difficulties in negotiating with foreign governments	24
Qualifications—General	26
American Flyers	27
Modern	28
ONA	29
TIA	32
USOA	33
World	36
Zantop	37
Conclusions	38
Ultimate conclusions	41
Recommendation	44
Appendixes:	
1 Transatlantic passenger charter traffic, 1963-1965	A-1
2 Yearly increases of total transatlantic charter passengers, 1957-1965	A-2
3 Monthly total transatlantic charter traffic, IATA and Part 295 carriers, 1963-1965	A-3
28751	
4 History and distribution of peak season pro rata traffic, 1957-1964	A-4

	Subject	*Page*
5	Trend of total air travelers between the United States and Europe, 1957-1967	A-5
6	Applicants' forecast of transatlantic charter passengers	A-6
7	Summary of applicants' operating proposals for 1966	A-7
8	Projected transatlantic charter yields per passenger-mile	A-10
9	Applicants' financial status	A-11
10	Applicants' financial operating results	A-12
11	Comparison of rates charged by Pan American and TWA with TIA's rates	A-13
Order		A-14
Certificates of public convenience and necessity		A-15

(28752)

28752

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

Docket 11908 *et al.*

The transatlantic is the largest transocean air travel market and the transatlantic charter market is the largest air charter market.

Transatlantic air travel is growing at almost double the rate of growth of all air traffic between the United States and other countries.

The transatlantic air charter market continues to be characterized by high seasonality, brief but intense periods of demand, and directional imbalance.

Dominance of the transatlantic charter market by foreign air carriers has increased in extent.

The preponderance of the demand of the transatlantic air charter market is for service with jet aircraft and transportation by piston aircraft is no longer acceptable.

Presently authorized U. S. carriers have failed to offer the jet equipment potential transatlantic travelers demand, have failed to offer the volume of such charter service needed, and have failed to develop the traffic in an aggressive manner. They are unlikely to perform future operations of the magnitude which they forecast.

A higher percentage of the total transatlantic charter travel would be generated in the non-northeast sections of the United States if these traffic sources were adequately developed.

The volume of transatlantic air charter traffic has grown rapidly since the last hearing in spite of the inadequacies of service and should reach a total of 750,000 passengers in the first full year of implementation of service by the four new carriers herein recommended for authorization.

The traffic of the four qualified applicants would consist primarily of newly generated traffic and would not have significant adverse effect on the operations of Capitol, Pan American, Saturn, and TWA.

28753

American Flyers Airline Corporation, Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc., are qualified to perform transatlantic air charter operations with jet aircraft.

Modern Air Transport, Inc., United States Overseas Airlines, Inc., and Zantop Air Transport, Inc., are not qualified to perform transatlantic air charter operations with jet aircraft.

Recommended that the Board issue certificates of public convenience and necessity for transatlantic air charter service to the four applicants qualified to perform such service with jet aircraft and deny the applications in all other respects.

28754

RECOMMENDED DECISION OF RALPH L. WISER, HEARING EXAMINER

Preliminary statement. This is a reopened phase of the *Transatlantic Charter Investigation.* Previous steps in this

proceeding include (1) the Board's decision of October 8, 1963, concluding that three supplemental air carriers—Capitol Airways, Inc., Overseas National Airways, Inc., and Saturn Airways, Inc.—should be authorized to perform transatlantic charter operations, (2) the approval of the President on February 18, 1964, of the decision granting licenses to Capitol and Saturn, and (3) reopening of the proceeding on February 24, 1964,[1] pursuant to the President's directive, to determine whether developments since the Board's original decision had rendered Overseas National no longer financially fit to conduct transatlantic charter air transportation. After a hearing on this reopening, the Board concluded that the record before it could not justify a finding that Overseas National met the statutory test of fitness. In the meantime, Overseas National had asked reopening of the record to receive evidence on refinancing agreements, contracts, and arrangements entered into subsequent to the close of the hearing, and it and other parties made presentations for and against further reopening of the proceeding on the question of need for authorizations in addition to those of Capitol and Saturn.

The Board reopened the proceeding March 30, 1965,[2] to determine (a) the current fitness and comparative qualifications for selection as transatlantic charter carriers of all supplemental air carriers (including Overseas National)

who were then applicants in the proceeding, and (b) whether the public convenience and necessity require the

[1] Supplemental opinion and order E-20530/E-20531.

[2] Order E-21966.

certification of supplemental air carriers to provide transatlantic charter service in addition to Capitol and Saturn. The Board further provided that any supplemental air carrier not already an applicant could file an application for transatlantic charter authority for consolidation in the proceeding and several new applications were filed and consolidated. American Flyers Airline Corporation, Modern Air Transport, Inc., Overseas National Airways, Inc., Trans-International Airlines, Inc., United States Overseas Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc., are the applicants now before the Board for consideration for transatlantic charter authority. The Board permitted intervention by Capitol Airways, Inc., Pan American World Airways, Inc., Saturn Airways, Inc., and Trans World Airlines, Inc. Copies of all applications were sent to the President prior to hearing pursuant to the provisions of section 801 of the Federal Aviation Act. Hearing has been held and briefs have been filed.

In the previous stage of the proceeding the Board recognized that the two major effects of operations by supplemental carriers in the transatlantic charter market had been (1) extending the availability of transatlantic air travel to a part of the potential market which otherwise could not have afforded it but which was able to do so by virtue of the substantially lower price for carriage on a pro rata charter compared with that on individually ticketed service, and (2) increasing the availability of charters during the peak summer season, when U. S. flag scheduled carriers, because it is also the peak season for individually ticketed travel, could not satisfy the demands of the transatlantic charter market. The Board concluded that three

of the supplemental carriers should be authorized to perform such service on a certificated basis.[3]

28756

Since the last hearing, the results of scheduled air carrier operations in the transatlantic market have changed from marginal to highly profitable; there has been failure of the group fare program of the scheduled carriers to meet the needs of travelers who would use charter service; the foreign air carriers have increased the extent of their dominance of the transatlantic charter market; the total traffic using that market has more than doubled in volume; the predominant proportion of its travelers have come to demand jet aircraft and to reject piston equipment for this transportation; but the market's development in traffic volume has been limited by the quality and volume of service offered.

Positions of the parties. The presently authorized U. S. carriers contend that it would be adverse to the public convenience and necessity to authorize any additional charter carriers, that they and the presently authorized foreign air carriers will meet any needs for service, and that entry of new carriers would adversely affect the ability of the presently certificated carriers to provide service. The applicants ONA and World urge the need for additional service but contend that only one additional carrier is needed. TIA contends that two additional carriers are needed, of which it should be one. American Flyers, Modern, USOA and Zantop take the position that the market needs the capacity of all qualified applicants. The Experiment In

[3] Order E-20530, appendix A, p. 5, mimeograph copy.

International Living, appearing under Rule 15 of the Procedural Regulations, supports the position that one or more additional transatlantic charter carriers should be authorized. Bureau counsel considers all of the applicants except USOA to be qualified and believes that the market potential and the limitations of existing service would justify the certification of all of the six qualified applicants but that

28757

only two should be authorized because to authorize more would give foreign countries the impression of a U. S. effort to preempt the market and have the effect of impeding the ability of presently certificated carriers as well as newly certificated carriers to obtain necessary foreign landing rights. Pan American and Saturn argue that the foreign relations aspect requires denial of any new authorizations.

Characteristics of the transatlantic charter market. The characteristics of the transatlantic charter market were detailed in the Board's previous decision, and it remains for the most part in the same posture. Briefly, it is characterized by high seasonality, brief but intense periods of demand, and directional imbalance. It is the world's most lucrative charter market and it is growing rapidly.

Looking at the transatlantic air travel market as a whole, i.e., scheduled and charter traffic, it is found to be the world's heaviest transocean travel market, and the factors affecting it will undoubtedly continue it in this position. In 1963 the transatlantic air travel market comprised 26 percent of the total world international air passenger-miles. In the same year, Europe was the origin or destination of 44 percent of the 5,997,000 total air travelers arriving or departing the United States in all directions. Passenger

(28757, 28758)

data herein are stated in terms of one way trips unless otherwise indicated. Total air traffic of IATA carriers in the transatlantic market increased at an annual rate of 18.1 percent between 1957 and 1964, about double the annual rate of growth of traffic within the United States (7.1 percent) and between the United States and other countries (10.7 percent).

28758

An indication of the world dominance of the transatlantic charter market is provided by a comparison of the 1964 transatlantic civil passenger charter revenues (excluding those of traffic to and from Canada) of U. S. and foreign IATA carriers and Capitol and Saturn of $43,949,310 with the total 1963 civil passenger charter revenues of all U. S. domestic, U. S. foreign, and U. S. overseas carriers of $20,751,000. The growth in the transatlantic charter passenger total has been erratic but it has been substantial each year, ranging from 18 to 52 percent in the years since 1957. It increased 28 percent in 1963, 30 percent in 1964, and 18 percent in 1965. A measure of the transatlantic charter market's seasonality is provided by the fact that the six months from May through September account for more than 80 percent of the year's total, with about 40 percent concentrated in the months of July and August.

The directionality can and has been mitigated to some extent by increased generation of foreign-originated flights through lower rates for such flights. However, the benefits of this remedy are limited by the reduction in revenue-mile yield which follows. Thus, while Saturn had more foreign-originated than U. S.-originated flights planned for 1965, the estimated total revenue from those flights was less than from the U. S. originations.

The demand for jet aircraft and the rejection of piston aircraft. The overwhelming preponderance of the demand of the transatlantic market is for service with jet aircraft. Transportation by piston aircraft is no longer acceptable. Since January 1964, over 98 percent of all transatlantic service has been provided with jet equipment. This was a gradual increase from the 54-percent jet showing in January 1960. The transatlantic charter market is in the same posture in demanding jet service.

28759

Travel agent opinion indicates that a 1,000-mile trip or a 5-hour elapsed time is about the point at which passengers generally will reject piston equipment and demand jet aircraft. They are practically unanimous in their opinion that service with piston aircraft is not acceptable to prospective transatlantic charter passengers.

The preference for jet aircraft and the relative unattractiveness of piston engine aircraft is illustrated by the 1965 experience of Capitol and Saturn. From May through September, Capitol's DC-8 jet aircraft was fully committed except for the capability of performing two transatlantic round trips in May. During the same 5-month period, it had the capability of performing 140 one-way transatlantic charter flights monthly with its seven Constellation piston engine aircraft, but operated only 2 in May, 54 in June, 59 in July, and 76 in August. Saturn had a capability of 150 one-way transatlantic flights monthly with its seven DC-7 aircraft but operated only 12 in May, 72 in June, 147 in July, 122 in August, and 44 in September.

The applicants who would use DC-7 aircraft stress its smaller capacity and its usefulness in handling smaller

groups than those required for charter of jet aircraft. However, the approximate doubling of elapsed time required for a DC-7 trip and the preference of passengers for jet equipment, considered in conjunction with the improved operating economy of jet aircraft, make it clear that there is little likelihood of success of service with piston engine aircraft. An operation limited to use of DC-7 aircraft such as contemplated by Modern, USOA, and Zantop would thus be doomed to probability of failure from the outset from the standpoint of both cost and traffic attraction. Accordingly, it is concluded that the needs for additional service are limited to service with jet aircraft.

28760

Operations of Part 295 carriers. Saturn increased its transatlantic charter traffic from 1,468 passengers in 1961 to 4,213 in 1962, 6,961 in 1963, and 5,547 in 1964. Revenue from this traffic increased from $203,446 in 1961 to $405,231 in 1962, $719,230 in 1963, and $1,599,830 in 1964. Its allocation of expenses results in a loss of $43,224 in 1963 and a profit of $56,486 in 1964 on transatlantic charter business.

Capitol increased its transatlantic charter traffic from 8,375 passengers in 1961 to 18,744 in 1962, 12,224 in 1963, and 30,975 in 1964. Revenues from such traffic were $1,320,349 in 1961, $2,115,060 in 1962, $1,321,243 in 1963, and $3,564,069 in 1964. Its allocation of expenses indicates a net profit of $28,000 in 1963 and $461,337 in 1964.

The traffic carried by Part 295 carriers during the first 11 months of 1965 was comprised of 45,488 passengers carried by Capitol, 39,603 by Saturn, 3,058 by TIA, 2,916 by World, and 1,049 by American Flyers.

American Flyers, TIA, and World did not obtain authority to operate transatlantic charters until April and June

and had insufficient time to develop substantial summer business here in 1965. A lead time of some 6 months is necessary to enable a carrier to put together a satisfactory transatlantic charter program.

Adequacy of presently authorized service. Transatlantic passenger charter traffic has been carried for the past 3 years, in order of volume, by 13 foreign route carriers,[4] 3 to 5 U. S. Part 295 carriers,[5] 2 U. S. transatlantic route carriers,[6] 7 other foreign carriers authorized under section

28761

402,[7] and 11 operators entering under section 1108(b).[8] In addition, Continental Air Lines, Inc., a U. S. domestic trunkline carrier, conducted such operations in 1965. Three U. S. supplemental carriers—American Flyers, World, and TIA—also conducted limited operations in the summer of 1965 under amendments of their interim certificates for supplemental air transportation which authorized transatlantic

---

[4] Aerlinte, Air France, Air India, Alitalia, BOAC, El Al, Iberia, KLM, Lufthansa, Qantas, Sabena, SAS, and Swissair.

[5] American Flyers, Capitol, Flying Tiger, ONA, Saturn, TIA, and World.

[6] Pan American and TWA.

[7] Air Canada, Adria Airways (Yugoslavia), Balair AG (Switzerland), British Eagle International Ltd., Caledonian Airways (Prestwick) Ltd., Icelandic Airlines, Inc., and KAR-AIR-oy (Finland). Sudflug (Germany) has not conducted any operations under its 402 permit.

[8] Belgian International Air Service, Braathens S. A. F. E. Air Transport A/S (Norway), British United Airways, Ltd., Globe Air, Ltd. (Switzerland), Interocean Airways, S. A. (Luxembourg), Martin's Air Charter (the Netherlands), Ostermanair Charter AB (Sweden), Shannon Air Limited (Ireland), Sobelair, S. A. (Belgium), Transair Sweden AB, and United Arab Airlines.

charter flights under Part 295 between May 1 and September 30, 1965, by World and TIA[9] and between June 2 and September 30, 1965, for American Flyers.[10] Modern was issued a temporary amendment for the period June 24-September 30, 1965,[11] but conducted no operations. Thus, some 40 carriers have participated in this airlift in the past 3 years. The foreign route carriers moved approximately 80 percent of the traffic in both 1963 and 1964 and 63 percent in 1965. The U. S. transatlantic route carriers accounted for only 10 percent in 1963, 5 percent in 1964, and 7 percent in 1965. Total U. S. carrier participation was 20 percent in 1963 and in 1964 and an estimated 30 percent in 1965. They had transported 71 percent of the total in 1957, 69 in 1958, 65 in 1959, 35 in 1960, 37 in 1961, and 35 in 1962.

28762

The applicants and Bureau counsel attack the adequacy of service by the presently authorized U. S. carriers on the grounds that these carriers have failed to offer the jet equipment potential transatlantic travelers demand, have failed to offer the volume of service needed, and have failed to develop the traffic in an aggressive manner. The record substantiates their positions in these respects.

During the period between December 1, 1964, and March 15, 1965, Capitol received 94 inquiries for 1965 transatlantic charters (65 for jet equipment and 29 for piston) on which it could not make quotations because of unavailability of the type of aircraft desired on the date desired. Saturn

[9] Order E-22045, dated April 16, 1965.

[10] Order E-22260, dated June 2, 1965.

[11] Order E-22357, dated June 24, 1965.

keeps no records of refused charters, but a review of its correspondence files prior to June 1, 1965, showed 13 requests for which aircraft were not available. Pan American received 195 inquiries between January 1 and May 18, 1965, for 1965 transatlantic charters which were refused due to inability to commit equipment. TWA had no records on refusals.

The presently authorized carriers argue that the evidence of charter refusals has no significance, because of the practice of charter prospects of shopping around and asking a number of carriers concerning the same trip. This is undoubtedly a practice sometimes followed. But the testimony of representatives of many large travel agencies is also strong in showing a lack of enough service in 1965. For example, one New York agent testified that his company could have sold at least 60 transatlantic charters instead of the 26 then scheduled if jet equipment had been available on the required dates. Another agency (located in Chicago) stopped promoting transatlantic charters in the fall of 1964 when it became apparent to it that jet equipment could not

be guaranteed for the 1965 summer months. A representative of the agency which is the largest sales incentive company in the world testified that it has become increasingly difficult to obtain charter flights from U. S. scheduled carriers, from whom it could obtain charter commitments no more than 25 percent of the time. An agent in Los Angeles testified that there were two foreign air carriers providing charters between that city and Europe, that the district sales manager of one (Air France) had advised him that it had 312 applications for 32 flights to Europe and that the other carrier (Lufthansa) had advised him that it was un-

able to fill 10 percent of the requests received. This agent had been unable to obtain any charter capacity from U. S. scheduled carriers and was unwilling to use the piston equipment which had been offered by Capitol and Saturn. A Detroit agent testified that it is "very difficult, and sometimes hopeless" to secure charter capacity to Europe during the May-September season and that his company had problems in securing capacity during the March-May and October-November periods. A New York agency's representative testified to difficulty in obtaining flights either in the desired equipment or on preferred dates, with meeting either objective frequently impossible. His experience had shown Alitalia, Air India, Iberia, and TWA to have practically withdrawn from the market and BOAC, KLM, and SAS to have sharply reduced the capacity they offered from that of 1964. While he found these reductions offset in part by increased capability of Icelandic Airlines and Capitol and Saturn, the offer of these carriers was for the most part limited to piston equipment and not considered suitable for most of this agency's customers. Another New York agent had experienced price increases by foreign carriers for jet charters, which in his opinion was due to the shortage.

28764

Transatlantic charter traffic is relatively insignificant to Pan American and TWA. In 1963, April-September pro rata charter traffic constituted only 0.6 percent of scheduled passengers in Pan American's Atlantic division and TWA's international division. The lack of importance which they attach to it is highlighted by a comparison of their 130-percent increase of April-September scheduled passenger traffic in the period from 1957 to 1964 with their 2.7 percent

increase of charter traffic in the same period. The attitude of relative indifference of Pan American and TWA toward this market is further demonstrated by the fact that only 1 percent of their transatlantic flights were charter flights in 1964, whereas 11 percent of the transatlantic flights of IATA foreign carriers were charter flights.

The certificated route carriers argued in the previous phase of the proceeding that the establishment of their group fares removed the need for certificated charter fares. The Board's view that it was unreasonable to expect these fares to attract large numbers of travelers who would otherwise use charter service has been sustained by subsequent developments showing a limited and decreasing use of the group fares and continued expansion of charter traffic. Pan American carried 14,321 group fare passengers in 1962, 27,921 in 1963, 12,664 in 1964, and 6,048 in the first 8 months of 1965.

It is now argued that the 14-21 day individual excursion fares of the certificated route carriers will do what the group fares failed to do. Typical fares are those between New York and London of $300 and between New York and Paris of $341. Pan American points out that the total of a passenger's share of a charter plus local fares for various air trips in Europe beyond the charter destination would result in approximately the same total as would the excursion fare on the basis of Capitol's charter price and a some-

what higher total on the basis of Saturn's price. However, these fares are so restricted that they cannot serve the prospective charter passenger. They are not applicable on weekends (7 a.m. Friday to 7 a.m. Monday). That this is

the time period which is by far the most popular for departure of charter passengers is illustrated by the fact that 62 percent of U. S. carriers' charter travelers in 1964 departed on the weekend eastbound and 55 percent westbound. The excursion fares also require that the return travel be commenced not earlier than 14 days or later than 21 days after departure. Only 8 percent of the charter passengers of Pan American and TWA in 1964 traveled for durations of stay that would not be excluded by this limitation. The excursion fares are also unavailable eastbound June 11 through July 11, August 6 through August 29, and November 5 through February 15. Westbound they are unavailable June 4 through June 27, August 20 through September 12, and November 5 through February 15. The cost comparison of Pan American would apply for particular trips using local air transportation beyond the charter point. But on other trips, charter would be much more economical. For example, World points out that the excursion fare for a Los Angeles-London round trip is $588, whereas the pro rata charter cost on a World charter flight with 165-seat occupancy would be $265 in the winter season. Travel agent opinion indicates that the excursion fares are no substitute for charter service.

The 1965 season was characterized by a slight reduction in the charter transportation offered by foreign route carriers rather than the substantial expansion which demand would have justified.

Both Capitol and Saturn have operated on a relatively passive basis and have been satisfied to depend on business the IATA carriers were unable to handle.

Saturn's record up to now is obviously not one of aggressive participation in the transatlantic charter market. It has little faith in advertising, as evidenced by its total of only $11,410 expended in 1964—a year in which its revenues exceeded $5 million. Charter travelers are very price conscious—and they much prefer jet equipment. Saturn's president admits that its rates have always been higher than average and probably will continue in that pattern. With such rates, a failure to advertise, and no jet equipment, it is not surprising that the success of Saturn's operation has been limited. The recently approved merger with AAXICO may of course change the company's approach, but there is no way of foretelling when, how and to what extent at this time.

Capitol has a somewhat better record in that it has provided jet service with its DC-8, although 41 percent of its usage was military during the June-October period. But it spent only $8,000 on advertising in 1964—a year in which its revenues exceeded $11 million.

Bureau counsel aptly points out that the attainment of an increase by Capitol and Saturn from approximately 45,000 passengers in 1964 to over 80,000 in 1965 with the limited efforts of these two carriers reflects in itself the vast potential of the transatlantic charter market.

Capitol, Saturn, Pan American and TWA contend that presently authorized carriers will more than meet any need of transatlantic charter traffic in 1966. They have indicated in this proceeding that they plan to offer the following availability in the May-October period:

Carrier	Flights	Seats
TWA[12]	156	23,400
Pan American[13]	368	58,500
Saturn[14]	1,080	122,400
Capitol[15]	1,608	235,500
IATA foreign carrier capacity estimated by Capitol/Saturn		245,000
		684,800

There is no way that anyone could prove that Pan American and TWA will not carry out their plans to assign more aircraft capacity to charter service in the future, but the argument must be discounted heavily. Facing the boom in overall passenger traffic which is underway in both the domestic and transatlantic markets and which can be expected to continue for some time, these carriers will have their hands full taking care of their scheduled operations and can be expected to relegate charter service to a back seat. In explaining its past inactivity in charters, the TWA witness characterized its policy as one of "first things come first" and stated that "there simply was not enough aircraft available to devote to all the company's markets." The future can best be judged by the past here. Their past his-

[12] 3 round trips per week with jet equipment.

[13] 1 round trip daily with jet equipment.

[14] 180 jet flights with 28,800 seats and 900 DC-7 flights with 93,600 seats.

[15] 768 DC-8 flights with 140,544 seats and 840 Super Constellation flights with 94,920 seats.

tory of providing transatlantic charter service shows them to be weak reeds upon which to rely for the development and service of this market.

Looking at Saturn's forecast, it must be borne in mind that there is no assurance that it will have jet aircraft in 1966, since it had made no arrangements at the time of the hearing to obtain such equipment. Capitol does have a DC-8F on hand and has two more on order—one for delivery in the fall of 1965 and one for delivery in March 1966. However, much of the capacity of its present jet was committed to military business and it is quite likely that this will be a limiting factor in 1966 with respect to Capitol's jets.

28768

The future activity of the foreign air carriers is yet more difficult to appraise. They failed to increase their offerings in 1965 over the level of 1964, even though the market obviously demanded more service.

The foregoing considerations lead to the conclusion that there is little likelihood that the presently authorized U. S. carriers would come up to the expectations they would have the Board view them with for 1966. It is probable that their transatlantic charter operations will be of substantially less magnitude than they forecast.

Transatlantic charter service has been confined largely to originations or destinations in the northeastern section of the United States. In 1964, the Northeast accounted for 74 percent of Pan American's transatlantic charters, 37 percent of those of TWA, 79 percent of those of Capitol, and 89 percent of those of Saturn. Similar concentration by foreign carriers is shown by the fact that they had only 40

flights in the peak months to nonnortheastern points, of which 26 were to or from the west coast and only 10 to or from midwestern points.

The nonnortheastern sections have 75 percent of the Nation's population and produce 76 percent of the Nation's total air passenger originations. Capitol and Saturn's argument that they have provided all the service to nonnortheastern points that would be used is mitigated in large measure by the revelation of their comparative failure to market aggressively transportation in the transatlantic market. It is probable that a higher percentage of the Nation's total transatlantic charter travel would be generated in the nonnortheastern sections if these traffic sources were adequately developed.

28769

The future transatlantic charter market. The applicants' forecasts of one-way transatlantic charter passengers for 1966 range from 391,400 by ONA through 526,509 by TIA, 753,000 by World, 821,492 by Modern, 906,662 by American Flyers, 985,696 by Zantop, to 1,000,000 by USOA. The estimates of ONA and TIA cover only pro rata charter passengers for the peak April-September season. That of Zantop envisions six additional supplemental carriers and that of World, four. These two applicants estimate 826,146 and 698,000, respectively, if only one additional carrier is certificated. Capitol and Saturn estimate the 1966 peak season pro rata charter market at 431,726 passengers. Bureau counsel contends that the year's total charter traffic in this market should reach 750,000 for the first full year of implementation of the new two-carrier authority he recommends.

American Flyers expands the 1964 transatlantic charter traffic of all carriers (419,752 passengers)[16] by the 1960-64 annual growth rate of 20 percent per year and reaches a total of 604,442 passengers based on the existing type of market development. It contends that the present carriers have concentrated their efforts on traffic to and from the northeastern States and have neglected the development of the rest of the country's traffic to and from Europe. It believes that the other States should increase their present 25 percent of total transatlantic charter traffic to 50 percent of the total market, in more consistent relation to relative position in population, wealth, income, and air passenger originations for scheduled transatlantic services.

28770

This results in a 302,220-passenger increase of the 1966 estimate to a total of 906,662.

Modern expands its estimate of 330,000 passengers for 1963 submitted in the original proceeding by the 47-percent experienced increase of 1964 pro rata traffic over 1963 for April through September and further expands by a 30-percent judgment figure for 2 years, to reach an estimate of 821,492 for 1966.

ONA estimates the 1966 transatlantic charter market at 391,400 one-way passengers. It reaches this estimate by expanding the 271,809 pro rata passengers during the 1964 6-month peak season by the 20-percent average yearly increase in this traffic between 1960 and 1964.

---

[16] This figure includes peak season traffic only in the case of foreign charter carriers.

[17] Prehearing Conference Report, served May 10, 1965, page 3.

(28770, 28771)

TIA presented an analysis showing the trend values for 1966 and 1967 based on peak season pro rata traffic between 1957 and 1964. On this basis this peak season traffic is shown to increase from a 271,809-passenger total in 1964 to 526,509 passengers in 1966 and 697,242 in 1967.

USOA's estimate is a judgment figure unsupported by analysis.

World submitted an estimate that 1966 transatlantic charter traffic would be 642,250 passengers if no new U. S. carriers participate, 698,468 if World only is added, and 753,500 if four new supplemental carriers are added (World and three others). The 642,250 total is based on an averaging of the results from projecting the long-run trend (from 1957) and the short-run (from 1962) of the component parts of transatlantic charter traffic, with a resulting total of 627,250 passengers. To this was added an allowance of 15,000 pas-

28771

sengers reflecting the grant of authorization to additional foreign charter carriers. The estimate of 56,218 more passengers if only World is added is based on 81,774 passengers to be carried by World in consideration of its projected jet capacity, of which 25,556 would be diverted from existing charter operations—mainly those of IATA carriers. The further estimated increase with addition of World and three other supplemental carriers is based on World carrying one-third of the total Part 295 traffic which would then be 238,300 passengers and upon estimates of further diversion from existing charter operations (again mainly those of the IATA route carriers).

Zantop computes a 26-percent average annual growth between 1957 and 1964 in April-September transatlantic charter flights and a 35-percent average growth in the number of eastbound transatlantic charter passengers in this period, and expands 1964 eastbound flight and passenger figures to reach an estimate of 2,785 flights and 397,186 transatlantic charter passengers eastbound for 1966 if existing authorizations are continued. It expresses a judgment that each new Part 295 authorization would increase the market 4 percent—thus that the eastbound passenger total would be 413,073 with one new carrier, 444,848 with three new carriers, and 492,511 with six new carriers.

Capitol and Saturn estimate that total transatlantic air traffic will increase 15 percent in 1965 and 10 percent in 1966. They estimate that U. S. route carrier charter traffic will double from 10,684 in 1964 to a 20,000-passenger total for the summer of 1965 and to 40,000 for the summer of 1966. Foreign route carrier charter traffic is forecast at a 15-percent increase for 1965 (222,479) and a 10-percent in-

crease for 1966 (244,726), the percentages estimated for increase of total traffic. Foreign charter carrier traffic is envisioned at a 2½ times 1964 rate for 1965 (25,000) and about a one-third increase for 1966 (35,000). Traffic of U. S. Part 295 carriers is viewed as rising from 56,991 passengers in 1964 to 80,000 in 1965 and 112,000 in 1966. This results in an estimate that the total summer season transatlantic pro rata charter traffic will increase from the 271,809 of 1964 to 347,479 in 1965 and 431,726 in 1966, with summer charter traffic 8.39 percent of the yearly total in 1965 and 9.48 percent in 1966.

(28772, 28773)

The merit of the contention of Bureau counsel that the volume of transatlantic charter traffic has depended in large measure upon price and the volume of service offered is illustrated in the volume of service aspect by the traffic figures for 1959 and 1960. In 1959, U. S. carriers moved 41,439 pro rata passengers and foreign flag carriers moved 22,432. The next year, however, the U. S. carriers moved 46,046 passengers and the foreign carriers 83,506. Since the traffic has at all times consisted predominantly of U. S.-originated passengers, it is obvious that the offering of more service by the foreign carriers accounted primarily for the increase in total traffic in 1960—a year in which total pro rata peak season traffic doubled. The almost universal plaint of the travel agents as to shortage of available charter service in 1965 is indicative of the probability that the market could provide much more traffic if more service were provided. The responsiveness of the transatlantic market to price in both the scheduled and charter fields is so well established by experience as to render further proof unnecessary.

28773

The record is clear that the recent growth of the market has occurred in spite of the minimal extent to which present carriers have actively exploited their opportunities. Alleviation of this situation can be expected from the new carriers. The jet aircraft which they offer will bring lower prices. Costs of individual travelers can be brought down to the vicinity of 2 cents per mile, a substantial drop from present levels of charter prices. The new carriers can be expected to develop traffic in larger measures in areas outside the northeastern section of the United States and

in the field of single entity charters for sales incentive programs. In the light of these factors, it is concluded that the 750,000-passenger total suggested by Bureau counsel is reasonably attainable.

Effect of additional services on existing carriers. Diversion from Pan American and TWA that might result from certification of additional carriers in this proceeding is relatively insignificant. Charter traffic amounted to only 0.6 percent of scheduled passengers in Pan American's Atlantic division and TWA's international division in 1963. The different nature of charter as distinguished from individually ticketed traffic and the fact that most of the charter traffic of the new carriers can be expected to be newly generated traffic make any effect on scheduled operations minimal in proportion. In 1961, Pan American's return on investment was only 4.31 percent and TWA incurred a loss of $13,711,000 in its international operations, but the year ended September 30, 1964, brought Pan American a 14½-percent return on investment and TWA a 29-percent return for its international operations.

28774

Capitol and Saturn are very pessimistic as to diversion and the ferry flight problem and foresee dire consequences if other Part 295 carriers are authorized. Capitol shows that while past years have seen from 3 to 10 Part 295 U. S. charter carriers in the transatlantic market, each year has seen two carriers obtaining 54 to 70 percent of the traffic attracted by these carriers, albeit not the same two carriers. It sees the percentage of ferry mileage increasing if more than two carriers are authorized, and it believes that addi-

tional carriers would imperil development of the off-season market.

The fatal defect in Capitol's argument is that it treats the transatlantic charter market for Part 295 carriers as a separate market apart from the total transatlantic charter market. Under its theory, there is an unstated but understood line between the traffic of these and other carriers. The record does not justify any such compartmentalization.

While chartering groups may, from time to time, as Saturn's witness testified, prefer scheduled carriers over supplemental carriers, World has presented a considerable amount of travel agent testimony showing that it has overcome this problem and that many customers now prefer its services. Other Part 295 carriers, have, of course, the opportunity to accomplish the same effect. The failure of Saturn and Capitol to do any significant advertising undoubtedly explains, at least in part, their predicament in this respect. Capitol and Saturn have not shown that the ferry problem is other than a management one of selling and scheduling their flights in such a manner as to fit charters together so as to avoid undue numbers of unpaid ferry

legs. World points out that Saturn itself in 1962—when there were six Part 295 carriers in the market—had ferry hours of only 11.3 percent of live hours. This was at a time when the market amounted to about a third of the total which can be expected when the new authorizations are implemented.

The development of the market has been limited by the lack of aggressive exploitation and the failure to provide enough service with jet aircraft. The adverse attitude of

transatlantic travelers which has developed toward piston equipment limits severely the market for operations with such equipment, and it could be expected that piston operations by additionally authorized U. S. charter carriers would have the effect of diverting within this limited market from the piston operations of Capitol and Saturn. However, the four carriers recommended for authorization should be able to attract traffic to their jet services which would be primarily newly developed traffic and would leave Capitol and Saturn reasonable opportunity to attract traffic in support of their operations.

28776

The balance of payments. Presentations have been made on the impact of proposed operations on the balance of payments between this country and foreign nations. The record is clear that each new U. S. passenger going abroad results in a deficit in the foreign payments balance and that each foreign-originated passenger has a favorable impact. The deficit from U. S.-originated travel is greater and the favorable impact from foreign-originated travel is less in the case of travel on foreign-flag carriers than on U. S.-flag carriers. World estimates the levels at $544 deficit for an American on a U. S.-flag carrier (—$94 port expense and —$450 travel expense); $639 deficit for an American on a foreign-flag carrier (—$283 fare, +$94 port expense, and —$450 travel expense); $523 favorable impact for a foreigner on a U. S.-flag carrier (+$184 fare, —$61 port expenses, and +$400 travel expenses); and $461 favorable impact for a foreigner on a foreign-flag carrier (+$61 port expense and +$400 travel expense). TWA estimates the

deficit to be about $150 greater for U. S. passengers and the favorable impact to be about $50 less for foreign-originated travelers. The differences between the two estimates are concerned in large measure with dispute as to whether charter passengers spend as much as average visitors in countries to which they travel.

It is unnecessary to resolve the differences in the estimates. The Board's mandate under the Federal Aviation Act to encourage and develop an air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense precludes the Board from planning an air transportation system designed to discourage air travel. The obvious way of improvement

with respect to the balance of payments aspect consistent with the Board's mandate is to attract more and more foreign-originated traffic and to increase the relative participation by U. S. carriers in the total air movement. Further authorizations of supplemental carriers as recommended herein should tend to push towards both of these objectives.

Difficulties in negotiating with foreign governments. Bureau counsel contends all applicants except USOA to be fit, willing and able, and concludes that the market growth would permit certification of all of the qualified applicants. However, he argues that authorization of more than two new transatlantic charter carriers would create difficulties in negotiations with foreign governments for landing rights and would inhibit the eventual acceptance internationally of the concept of expanded economic opportunity for this class of carrier.

The ground rules established in this proceeding at the prehearing conference, provided that the evidence of the parties must be reduced to written exhibit form and exchanged with other parties on prescribed dates prior to the hearing.[17] No party submitted any evidence in its exhibits concerning difficulties in negotiations with foreign governments. Nor did any party give any notice whatsoever to the other parties during the hearing that it desired to try the issue of effect of new authorizations on negotiations with foreign governments as an issue in this proceeding, with one possible exception. On the next to the last day of the hearing, after all the applicants had introduced their evidence, Saturn attempted to present a witness' oral testimony on its problems in respect of landing rights. This was an untimely attempt to inject a new issue into the proceed-

ing and violated the ground rule requiring reduction of evidence to written form. It was therefore denied.

Bureau counsel refers to several responses on cross-examination of supplemental carrier witnesses that they had encountered difficulties in obtaining landing rights in certain countries. The responses generally concerned explanations for the delay in expansion of charter operations in the Pacific. Evidence was not received or offered which would provide a basis upon which the Board could determine the reaction of foreign governments to different numbers of authorizations of transatlantic charter carriers. There was no hint of an intent to inject this issue until Saturn's offer of proof at the end of the hearing.

[17] Prehearing Conference Report, served May 10, 1965, page 3.

(28778, 28779)

Accordingly, the contentions of Bureau Counsel, Pan American and Saturn are rejected as lacking support in the record insofar as these parties ask that some or all of the applications be denied because of the effect of their grant upon negotiations with foreign governments.[18]

We do not here reach the question, therefore, as to whether such an issue would be proper for trial at the Board hearing or should be reserved for the President's decision on the basis of his peculiar knowledge of matters of this type which gave rise to the requirements of Section 801 that he approve all certificates authorizing foreign air transportation.

28779

Qualifications—general. Each of the applicants, as are most of the existing supplemental air carriers, is owned and controlled by a single individual or a very small group. American Flyers is owned by Mr. Reed Pigman, Modern by Mr. John P. Becker,[19] Overseas National by Messrs. Charles C. Hickox, G. F. Steedman Hinckley, and Louis Marx, Jr.,[20] Trans International by Messrs. Kirk Kerkorian and Glenn A. Cramer,[21] USOA by Mr. Ralph W.

---

[18] American Flyers by motion of September 28, 1965, asked that the examiner strike the portions of the briefs of Bureau Counsel and Pan American bearing on this question. The above consideration and rejection of these contentions is more appropriate and the motion is therefore denied.

[19] A ⅜ interest was sold to Mr. Ora J. Curry in March 1965.

[20] A total of 625 shares of the 15,000 outstanding are owned by 11 other individuals.

[21] Mr. Kerkorian owns 65.9% and Mr. Cramer 7.7% of the stock. The other 24.4% is distributed among a large number of shareholders, only one of whom (Henry P. Huff, executive vice president) owns as much as 1%.

Cox, Jr., World Airways by Mr. Edward J. Daly, and Zantop by Messrs. Howard, Lloyd, and Duane Zantop. The relationships go back many years except for the ONA ownership.

Each of the applicants is a corporation organized under the laws of the United States or one of its States, Territories, or possessions, of which the president and two-thirds or more of the board of directors and other managing officers are citizens of the United States and in which at least 75 percent of the voting interest is owned or controlled by citizens of the United States. Each of the applicants is, therefore, a citizen of the United States within the meaning of section 101(13) of the Federal Aviation Act.

No evidence has been presented which would justify an adverse finding with respect to the compliance disposition of any of the applicants, and each is found to have the requisite disposition to comply with the Act and the Board's regulations.

28780

Each applicant has submitted a plan of operation showing how it will provide transatlantic air transportation. Appendix 6 summarizes the plans, showing equipment to be used, volumes of operations to be provided, and forecasts of revenues and expenses. The revenue and expense forecasts are in general somewhat optimistic, although the degree of over and understatement varies. The four applicants selected for certification (American Flyers, ONA, TIA, and World) submitted the more disciplined analyses.

The financial status of each applicant as indicated on a recent balance sheet is shown in appendix 8 and the financial results of a recent year of operation are shown in appendix 9.

(28780, 28781)

Qualifications—American Flyers. American Flyers has a long history of operations in substantial volume as a supplemental air carrier, and for the past 10 years has included charters to foreign countries in its business. However, these foreign operations were limited to Mexico, Canada, and the Caribbean area until 1965, when transatlantic authority to operate for that year's summer season was granted the carrier. It carried 1049 transatlantic charter passengers under this authority. Its present fleet of 15 aircraft includes two turboprop Electras and five 1049G Super Constellations which would be used in the transatlantic operation in the beginning. The other aircraft on hand are four 049/149 Constellations and four DC-3's. The applicant's transport activities resulted in $7,510,101 revenue in the year ended September 30, 1965, from which its profit was $236,045.

In addition to its transport activities, American Flyers has conducted flight crew training since 1939, at schools at Fort Worth, Texas, and Ardmore, Oklahoma.

28781

The applicant has opened or plans to open soon a total of seven midcontinent sales offices (Chicago, Houston, Dallas, Fort Worth, Ardmore, Atlanta, and New Orleans). It will open sales offices in London, Frankfurt and Rome if it receives certification herein.

The carrier's operations have included a higher percentage of commercial revenue than the other applicants. Its charters have provided service to more U. S. points than have those of any other applicant.

American Flyers plans to obtain DC-8 jet aircraft in the fall of 1966 if certificated to provide transatlantic ser-

vice. It has been advised by Douglas that this aircraft will be available for delivery in October 1966 at a base price of $7,805,500 plus $400,000 for additional equipment. The record contains the written opinion of American Flyers' banker that the carrier is capable of obtaining the necessary financing upon reasonable terms for the acquisition of two of these aircraft at a cost of $18 million.

Qualifications—Modern. Modern has operated for a long period on a relatively modest basis. Its total revenues were $1,005,491 in 1962, $822,488 in 1963, and $1,067,892 in 1964. It experienced a net profit of $96,581 in 1962 and losses of $76,108 and $74,376 in 1963 and 1964. It states that these losses were caused by excessive maintenance costs on faulty Constellation engines, a situation which has been remedied. Modern's brief points out that its July 1965 report shows a $97,832 profit.

Modern owned three DC-7C aircraft, two L-049 Constellations, and one L-749 Constellation at the time of hearing. It plans to lease three additional DC-7C aircraft if it obtains transatlantic authority.

As of March 31, 1965, Modern's balance sheet showed a

negative working capital position and a negative net worth. Three-eighths of the company's outstanding stock was sold for $50,000 in March 1965, indicating that the purchaser appraised the company's total net worth at that time as approximately $133,000. Modern's exhibits contain no showing of ability to expand into a jet operation, nor, for that matter, does Modern explain how it would finance the expansion required by a transatlantic operation with piston aircraft.

(28782, 28783)

While it is true, as Bureau counsel points out, that Modern has been able to get along on a negative net worth and negative working capital position, this is not the type of situation which allows the cushion for temporary setbacks which in the nature of things are to be expected. The fact cannot be ignored that two of the present applicants, ONA and USOA, lost such substantial sums of money that they suffered financial failure.

While Modern has succeeded in continuing operations on a modest scale over a long period of time, there is no assurance that it would be able to succeed in a greatly expanded scale of operations. In fact, the record of supplemental carriers contains many instances of failure upon such expansion. For example, Standard Airways conducted a modest operation over a long period without failure, but when it expanded into a larger different operation it soon suffered financial reverses which led to termination of its operations. Modern will either so limit its operations that its contribution is insignificant or run undue risk of failure. It has not shown availability of capital or plans to support the multiplication of its operations which a significant transatlantic operation would require.

Qualifications—ONA. ONA is reactivating its operations after a dormant period of some 2 years, during which it

28783

went through a bankruptcy proceeding. The affidavit of Mr. George W. Tompkins, its president, which accompanied the bankruptcy petition, stated that the carrier's financial reverses were caused mainly by the fact that its aircraft (DC-7's) had become obsolescent and could not be operated economically in the light of competition of other carriers offering jet aircraft.

ONA instituted proceedings under section 302 of Chapter XI of the Bankruptcy Act by filing a petition in the District Court of the United States for the Eastern District of New York on October 28, 1963, in which it stated that it was insolvent and that it intended to propose an arrangement pursuant to Chapter XI. It attached to the petition a balance sheet as of October 4, 1963, showing assets of $747,342, liabilities of $2,088,535, and a deficit of $1,341,193. Its summary of debts and assets submitted to the court with a certificate of its vice president, dated January 24, 1964, shows debts totaling $3,514,186 and assets totaling $527,093.

A plan of arrangement was confirmed by the referee in bankruptcy on July 8, 1965. The plan provides that (1) priority tax and governmental agency claims be paid on confirmation, (2) priority wage claims be paid 25 percent in cash on confirmation and the balance in 10 monthly installments, (3) unsecured creditors' claims of $100 or less be paid 25 percent in full settlement on confirmation, and (4) unsecured creditors' claims of more than $100 be paid 10 percent in full settlement (2½ percent in 12 months, 5 percent in 24 months, and 2½ percent in 30 months).

A previously arranged refinancing program then was carried into effect. Equity capital of $1,500,000 was paid to the company in cash on July 14, 1965, by 14 individuals in return for 15,000 shares of stock, and $1,800,000 was loaned to the company by Empire Trust Company of New

York. The loan matures August 31, 1973, and is to be amortized in 48 monthly installments of $37,500 each, beginning September 30, 1969. Interest is payable at 5 percent

until June 30, 1967, 5½ percent thereafter until maturity, and 6 percent after maturity. The loan is guaranteed by Mr. Neil McConnell, who has been granted an option to purchase 10,000 shares of stock at $100 per share at any time prior to June 18, 1968. Mr. George W. Tompkins, the company's president, has been granted an option to purchase 750 shares of stock at $100 per share at any time prior to July 15, 1970.

The officers and directors of the company are Messrs. George W. Tompkins, chairman of the board and president; G. F. Steedman Hinckley, executive vice president, treasurer, and director; James W. Bailey, vice president of sales and administration and director; Louis Marx, Jr., director; Ernest O'Donnell, Jr., director; Benjamin Regan, director; John W. Starr, director; Frederick S. Wonham, director; and Henry B. Greenberg, director.

Messrs. Tompkins, Hinckley, Bailey, and Starr were with ONA for substantial periods during the time of its previous operation. Mr. Marx is president or chairman of the board of a number of business enterprises (Deerfield Oil Co., Deerfield Enterprises, United Western Oil Co., Frontier Producing Co.). Mr. O'Donnell is a retired U. S. Air Force general; Mr. Regan is a partner of Hornblower & Weeks (investment bankers) and director of several companies; Mr. Wonham is a partner of G. H. Walker & Co. (investment bankers); Mr. Greenberg is a well-known retired professional baseball player.

Most of the new equity funds were provided by Mr. Charles C. Hickox ($500,000), Mr. Hinckley ($374,000), and Mr. Marx ($563,000). These three thus hold 14,375 of the total 15,000 shares of stock outstanding.

ONA plans to conduct operations with two DC-7's and two DC-8's. The DC-8's are on order from Douglas Aircraft Company for delivery in May and June 1966 under an arrangement in connection with which ONA has deposited $1,492,648 on the aircraft, which are to be bought by Boothe Leasing Corporation (a Douglas affiliate) and leased to ONA. The deposit is to be used as a credit against rentals at the rate of 1/96th for each month the aircraft are leased. It is not refundable except that any unused amount will be paid ONA if the lease is not renewed. The carrier's plans call for the lease of the DC-7's.

The key employees of the carrier will consist primarily of former ONA personnel who have either returned to the company or agreed to do so.

Official notice is taken of the fact that the Board's files contain a copy of Overseas National Airways operation specification FAA 1014 "Aircraft Listing" effective October 5, 1965, which shows it to have Douglas DC-7B aircraft Reg. No. 821D, serial No. 45330, Designation 7-99, under lease.

Previous to its business failure, ONA had a long period of operation as one of the largest supplemental air carriers. In 1960, its $28 million revenue represented 46 percent of total supplemental carrier revenue for that year. The carrier was selected by the Board in the earlier phase of the proceeding as one of the three applicants with the most transatlantic charter experience.

Qualifications—TIA. TIA is the second largest and strongest supplemental carrier in assets and scope of operation, standing far above any other except World. In

the year ended September 30, 1965, its revenues were $18,853,163 and its profit $4,851,000.

TIA has owned jet aircraft since the spring of 1962 and was the first supplemental carrier to operate such equipment. It thus has had approximately a year's longer jet experience than World, the other applicant with substantial

jet operating experience. The carrier now owns three jet aircraft (two DC-8F-54 180 passenger and one DC-8-51 153 passenger) and one L-1049G 102 passenger and three L-1049H 102 passenger aircraft. It points out that its operation of jets under lease to Lufthansa from April 1 through October 31, 1965, together with its operation of transatlantic charters under interim certificate, will give it jet experience in the transatlantic in excess of that of Capitol.

Since 1960, TIA's operations have been primarily in the international markets, extending over a large part of the world. It has developed more revenue in commercial charter business in 1964 and 1965 than any other applicant. TIA has sales personnel in Europe and in all areas of the United States, which will be strengthened and expanded to new locations. The operations, maintenance, and service departments will also be substantially increased in both the United States and Europe.

TIA is purchasing two large 258-passenger stretch out convertible jets (DC-8-61F's), with which it asserts it will be possible to make a profit on charter groups at a prorated fare of about 2 cents per passenger-mile. The first of these will be received in April 1967 and would be used in the transatlantic charter market that year.

(28786, 28787)

Qualifications USOA. USOA was for several years one of the larger supplemental carriers, including both charter and individually ticketed operations. In the period from March 1960 through March 1962, USOA rendered transportation for the Department of Defense for revenues of $3,751,449. Its nonmilitary charter revenues totaled $213,842 in 1961, $216,520 in 1962, $267,604 in 1963, and approximately $250,000 in the first 8 months of 1964. However, the applicant is now a nonoperating company without employees and without operating authority.

28787

USOA plans are based on use of six leased DC-7C aircraft. Five are already on lease from C&J Aircraft Leasing Company, a partnership of the former executive vice president of USOA and of the father of USOA's president.

USOA has been a nonoperating company for the past year. Its financial weakness caused the Board to suspend its interim operating certificate on September 24, 1964,[22] and, after hearing, to determine on December 7, 1964, that it is no longer financially fit, willing, and able to hold authority as a supplemental carrier.[23] Thereafter, the Federal Aviation Agency suspended its air carrier operating certificate.

Since the suspension, some $450,000 of debts has been paid by USOA and a long-term indebtedness of $1,500,000 has been forgiven by Ocean Air Tradeways, a partnership owned by stockholders of USOA. In addition, it has reorganized its management. USOA presented a pro forma

[22] Order E-21325, dated September 24, 1964.
[23] Order E-21562, dated December 7, 1964.

balance sheet showing the effects of a planned consolidation of assets of USOA and its wholly owned subsidiary, Air Power Overhaul, Inc., using the USOA balance sheet as of December 31, 1964, the Air Power Overhaul balance sheet as of March 31, 1965, and a written appraisal of a parcel of land. This shows current assets of $382,229, investments in subsidiaries of $362,839, and fixed assets of $908,013. Current liabilities are shown at $716,710 and net worth at $937,790. The current assets are primarily accounts receivable ($178,426) and inventories ($178,334). The fixed assets include $750,000 in land donated by Mr. Cox, the

28788

applicant's principal stockholder, at an appraised valuation. Its cash totals $6,924.

While the carrier indicates an intent to sell or mortgage the land at $750,000 and to sell seven DC-4 aircraft and its DC-4 and DC-6 spare engines, spare parts, and inventories for $750,000, the amount of cash that could be obtained and the date of its receipt are matters left to the realm of conjecture.

The applicant's president testified that he had contacts with 50 to 75 of USOA's former employees who have expressed a desire to return to work but that none were on the payroll at the time of the hearing.

28789

Qualifications—World. World is by far the largest and strongest supplemental carrier from the point of view of assets, scope of operations, and financial strength. On June 30, 1965, it had a positive working capital position of $8,072,511, compared with the negative working capital

positions of the other applicants and Capitol and Saturn ranging from $714,291 for Modern to $3,104,592 for Capitol. Its flight and ground equipment net valuation was $19,439,644, compared to valuations for the others ranging from ONA's $1,750[24] to TIA's $11,690,192. Its stockholders' equity of $12,049,384 compared with that of the others ranging from ONA's negative $1,048,105[24] to TIA's positive $4,210,756.

During the year ended September 30, 1965, World's business brought $29,859,200 revenues and a profit of $9,243,668. World had 390 employees engaged in air transportation on September 30, 1965.

This applicant owned three Boeing 707-373C fan jet aircraft at the time of hearing and had orders for delivery of a fourth in October 1965 and a fifth in May 1966. Its plan of operations contemplates rotation of these aircraft into transatlantic charter service to provide the equivalent of three aircraft available at peak periods. This would constitute the largest jet aircraft offering of transatlantic charter service of any applicant. Its projected aircraft fleet will enable it to perform the planned transatlantic operations and to maintain its 1965 level of military and commercial operations in other areas.

World has an extensive sales organization, including a European regional manager and has planned for offices in

28790

London, Frankfurt, and Paris; its plans call for expenditure of $952,550 in 1966 for sales promotion of the trans-

[24] These figures do not reflect the injection of new capital after the court's confirmation of the plan of arrangement for ONA in July, 1965.

atlantic charter market. World points out that its $201,433 for system advertising in the year ended June 30, 1965, compares with $12,107 by Capitol, $15,230 by Saturn, $14,033 by American Flyers, $206 by Modern, $1,716 by TIA, and none by Zantop.

World has devoted a great deal of effort to development of the incentive type of single entity charter, in which a business firm provides at its own expense a charter flight, perhaps with other expenses paid, for selected personnel as an incentive for high production or morale. There has been no significant development of such charters in the transatlantic market, although they have obvious possibilities in view of the attractiveness of a European trip and the telescoped time schedule now possible with jet aircraft. The applicant plans to market such charters as one of the means of developing business during times outside the summer peak season. This applicant has established a very favorable public image for reliability and quality of performance of charter service.

Qualifications—Zantop. Zantop, based at Detroit Metropolitan Airport, Inkster, Mich., has been a supplemental carrier since mid-1962. However, its operating experience goes back to 1946, when its predecessor partnership was founded by three brothers, Messrs. Howard, Lloyd, and Duane Zantop, who are still the owners and managers. It has steadily added to and upgraded its fleet and at the time of the hearing operated 70 large aircraft (44 C-46, 3 DC-3/C47, 8 DC-6A, 7 AW-650, 1 DC-7B, and 7 DC-7BF). Of these, 43 were owned and 27 leased. The carrier experienced a loss ($90,166) in its fiscal year ended July 31, 1962, but has achieved substantial earnings each year since then ($312,441 for fiscal year 1963, $284,014 for fiscal year 1964,

and $895,600 for the 10 months ended April 30, 1965). It has a strong balance sheet position, with the April 30, 1965, statement showing $5,022,785 assets ($2,232,462 current assets, $19,432 investments, $1,944,847 operating property and equipment, and $826,043 deferred charges), $3,244,109 liabilities ($2,620,985 current liabilities, $539,400 long-term liabilities, and $83,724 deferred credits), and $1,778,674 net worth. It had $297,937 cash on hand or in banks.

In addition to its home base at Detroit, Zantop leases a hangar at Ontario, Calif., and maintains mechanics and routine maintenance facilities in New Jersey, Indiana, Ohio, and Texas, and maintains facilities for handling, loading, and unloading of aircraft at 16 locations on a 24-hour, 7-days-a-week basis. Zantop and its subsidiary, Calhoun Equipment Services, Inc., had 944 employees engaged in air transportation as of June 30, 1965.

Zantop is unquestionably one of the strongest supplemental carriers, but its experience has been limited almost exclusively to cargo transportation. Thus, its report to the Board for the quarter ended September 30, 1965, shows passenger revenue of $100,546, or only a little more than 1 percent of its total transport revenue of $7,928,408.

Zantop has no aircraft presently available for transatlantic charter operations but would obtain the required aircraft following certification. It presented plans based upon use of three DC-7C aircraft which it would acquire and on which it presently has an option. It plans on funding the 1966 operations with existing capital and believes no additional financing to be required.

Qualifications—conclusions. Bureau counsel proposes that the standards of fitness required for the service in-

volved herein, with its long overwater flights to points in Europe, Africa, and the Middle East, in competition with some 30 other carriers, should be that new carriers must be familiar with passenger-generating and handling techniques, strong enough financially to compete effectively with the better known route carriers, and possessed of long-range aircraft which will be acceptable to prospective charterers. These are reasonable requirements. For the reasons set forth elsewhere herein, it is also concluded that the new carriers must be able and willing to provide service with jet aircraft.

The 7 applicants herein include 5 (American Flyers, TIA, Modern, World, and Zantop) of the 11 survivors of several hundred supplemental carriers which started business in the 1945 to 1950 period. ONA and USOA have failed financially, but ONA has obtained new capital. The fact of the others' survival indicates their hard core ability to continue operations through good years and bad and under favorable and adverse circumstances.

It is clear that the need of the transatlantic charter market is for service with jet aircraft and not for additional piston aircraft operations. Accordingly, those applicants who would limit their services to operations with piston aircraft cannot be found fit, willing, and able to provide the air transportation required. Modern, USOA, and Zantop are in this category and their applications must be denied. Denial of USOA's application would be required in any event because of its lack of financial fitness.

World and TIA, the Nation's two largest supplemental air carriers, have long records of successful operations.

They have ample jet equipment on hand to perform transatlantic charter air transportation and have orders for additional jet aircraft which will strengthen their positions

28793

in this respect. Their financial strength is so outstanding that there is no question of their ability from that standpoint.[25] They have the required familiarity with passenger generating and handling techniques. Both operated under temporary authority in the transatlantic charter market during the summer of 1965. World carried 2,916 passengers and TIA 3,058. They are undoubtedly qualified to perform transatlantic charter air transportation.

ONA failed in its past operations, due, at least in part, to the inability of its DC-7 aircraft to compete with jet equipment. However, it has now obtained adequate new capital and, while much smaller in stature than World or TIA, has the financial strength needed for inauguration of the operations it proposes. It will have the required jet aircraft during the 1966 peak season and thereafter. It performed extensive operations in the transatlantic charter market and will utilize in its proposed service a large number of the personnel who participated in the earlier transportation. It has the necessary familiarity with passenger-handling techniques. It is concluded that ONA is qualified to perform transatlantic charter air transportation.

[25] While TIA's working capital figure is a negative one, as is that of all supplemental carrier applicants and Saturn and Capitol, a large part of the current liability figure represents the portion of long term debt payable within the next year. Excluding this element, TIA has a positive working capital showing of about $1 million. It has arranged an $11 million loan from the Bank of America for the purchase of two DC861F stretch-out jets.

(28793, 28794)

American Flyers is the third supplemental carrier which transported transatlantic charter passengers under temporary authority during the summer of 1965. It carried 1,049 passengers during this period. Although smaller in stature than TIA and World, it has a record of successful operation and has demonstrated familiarity with passenger handling techniques in the course of reaching the highest percentage of commercial revenue among the supplemental

28794

carriers. American Flyers will perform its services at the outset with the slower propeller jet Electra, but will soon thereafter obtain full jet aircraft and place them in operation. The availability of its jet aircraft will not be subject to demands of a fixed MATS contract commitment, a factor which may at times limit the availability of the aircraft of TIA and World. The opinion evidence of its banker as to ability to finance the jet purchase, considered in conjunction with its success in financing $5 million for Electra purchase, is convincing that the applicant will be able to make necessary financial arrangements for the jet purchase. It is concluded that American Flyers is qualified to perform transatlantic air transportation.

Ultimate Conclusions. In the light of the matters set forth herein, it is concluded that the growth of the transatlantic charter market and the expected future volume, the lack of aggressive exploitation of the market by U. S. scheduled and Part 295 carriers, the dominance of foreign air carriers, the demand of the public for jet transportation, and the lack of availability of sufficient jet charter capacity indicate a need for more jet charter capacity than existing carriers can be expected to provide in the transatlantic sector. The four applicants qualified to provide such charter transportation with jet equipment can be

expected to depend primarily on newly generated traffic and not to divert traffic in undue amounts from presently authorized U. S. carriers.

These four carriers will contribute in a number of new aspects in the manner that entry of new blood brings such improvements to an industry. Thus World will bring emphasis on development of the incentive plan charter, in which it has considerable experience, as a year-round business, and it will serve west coast points better than the existing carriers. American Flyers will stress new service

for the inland area between the east and west coasts. TIA will be more likely than any other applicant to use stretch out jets in the market at an early date, thus bringing pro rata passenger prices down to the neighborhood of 2 cents per mile. ONA will bring to bear its long experience in transatlantic air transportation.

All of the applicants, as well as Capitol and Saturn, have depended for a large portion of their revenue on military revenues, some obtained under MATS contracts and some under CAM operations. A factor which has led those depending on MATS contracts to seek sources of civilian business has been the Department of Defense policy designed to encourage their development of nonmilitary business by directives requiring that particular percentages of revenues of MATS contractors be derived from commercial sources. In addition, statements of the Secretary of Defense before a Congressional committee have indicated a desire of that Department to use U. S. Air Force aircraft and pilots rather than commercial carriers at a future time. The recommended authorizations will provide a significant opportunity for the new carriers to expand their commercial business.

Argument has been presented that smaller supplemental carriers need expansion into the transatlantic market, but it is without merit in the absence of a showing of qualification to serve the market with the jet aircraft which the public now demands here.

In its previous decision the facts of record led to an estimate of less than 290,000 passengers for the future transatlantic charter market and the Board decided that three supplemental carriers should be certificated. As has been set forth, it is reasonable to conclude that the market volume will be 750,000 passengers in the first full year of

implementation of the service here recommended. This renders a recommendation of four additional supplemental carriers, or a new total of six, consistent with the Board's conclusion in the previous opinion herein that the number of applicants to be authorized should be sufficiently restricted to afford the selected carriers the greatest possible opportunity to conduct profitable operations consistent with the needs of the traveling public for transatlantic charter services.[26] And this latter part of the Board's decision is worthy of note. There is nothing in the Board's findings there that encourages a view elevating the welfare of particular carriers at the expense of needed service. In fact, the Board pointedly adverted to the transatlantic charter market's highly seasonal characteristic, its brief but intense periods of demand, and its directional imbalance. The Board found that in these circumstances no single applicant would have the equipment and personnel to meet the demands of this market and still be able to conduct other services and that no carrier could survive

[26] Order E-20530, dated February 24, 1964, appendix A, p. 13 of mimeo opinion.

on this business alone. Except for some alleviation of the directional imbalance by use of lower fares for European-originated charters, the market's characteristics are in substantially the same posture. But it is now much larger—in fact the expected volume is about triple the size of that viewed in the Board's opinion. In the light of the new developments, it is clear that just as one supplemental would not be adequate for the public need at that time, two are

not adequate now. The reasonably expected market requires the certification of all four of the qualified applicants in addition to Capitol and Saturn. The effective period of the certificates should, of course, run concurrently with the authorizations of Capitol and Saturn.

Recommendation. On the basis of the foregoing findings and conclusions and all the record, it is recommended that the Board find that:

1. The public convenience and necessity require transatlantic air charter services by American Flyers, Overseas National, Trans International, and World.

2. American Flyers, Overseas National, Trans International, and World are fit, willing, and able properly to perform transatlantic air charter transportation and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder.

3. All applications, motions, and requests involved in this proceeding should be denied, except to the extent otherwise indicated.

It is further recommended that the Board adopt the attached order and issue the attached certificates of public convenience and necessity to the aforenamed carriers.

28798

APPENDIX 1

TRANSATLANTIC PASSENGER CHARTER TRAFFIC CALENDAR YEARS 1963-65[1]

Class of carrier	1963 No. of passengers	1963 % of total	1964 No. of passengers	1964 % of total	1965 No. of passengers	1965 % of total
U. S. transatlantic route carriers[2]	32,229	10	21,226	5	37,729[8]	7
U. S. domestic carriers[3]	—	—	—	—	20,625[9]	4
U. S. Part 295 carriers[4]	34,269	10	64,330	15	93,848[10]	18
Total U. S. carriers	66,498	20	85,556	20	152,202	29
Foreign route carriers[5]	257,661	77	329,575	76	321,240[8]	68
Other 402 foreign carriers[6]	8,200	2	15,450	3	33,961[9]	7
1108(b) operators[7]	1,293	1	876	1	1,983[9]	1
Total foreign carriers	267,154	80	345,901	80	357,184	71
Total all carriers	333,652	100	431,457	100	509,386[11]	100

[1] The above information includes civil pro rata and single entity charter traffic between the U. S.-Europe/Middle East. A round-trip flight or passenger is counted twice.

[2] Pan American and TWA.

[3] Continental.

[4] American Flyers, Capitol, Flying Tiger, Modern, ONA, Saturn, TIA, and World.

[5] Aerlinte, Air France, Air India, Alitalia, BOAC, El Al, Iberia, KLM, Lufthansa, Qantas, Sabena, SAS, and Swissair.

[6] Air Canada, Adria Airways (Yugoslavia), Balair AG (Switzerland), British Eagle International, Ltd., Caledonian Airways (Prestwick) Ltd., Icelandic Airlines, Inc., and KAR-AIR Oy (Finland). Südflug, Süddeutsche Fluggesellschaft mbH (Germany) has not conducted any operations under its 402 permit.

[7] Belgian International Air Service, Braathens S. A. F. E. Air Transport A/S (Norway), British United Airways, Ltd., Globe Air Ltd. (Switzerland), Interocean Airways, S. A. (Luxembourg), Martin's Air Charter (the Netherlands), Ostermanair Charter AB (Sweden), Shannon Air Limited (Ireland), Sobelair, S. A. (Belgium), Transair Sweden AB, and United Arab Airlines.

[8] January through September actual traffic expanded to 100% on basis of 1963 and 1964 IATA experience of 85% of yearly total during these 9 months. This probably understates 1965 total in view of lengthening of peak season.

[9] Actual traffic through August 1, 1965—estimated for remainder of year.

[10] Actual January-November traffic only.

[11] This is estimated total for portions explained in footnotes 8 and 9.

Source: Supplemental exhibit BER-3 and posthearing exhibits received from carriers by stipulation.

28799

APPENDIX 2

YEARLY INCREASES OF TOTAL TRANSATLANTIC CHARTER PASSENGERS 1957-1965

Year	Number of passengers	Percent increase over previous year
1957	70,644	
1958	92,057	30%
1959	108,318	18
1960	164,255	52
1961	203,959	20
1962	—	—
1963	333,652	28[1]
1964	431,457	30
1965	509,386[2]	18[2]

[1] The 1962 figure for actual total charter traffic is not in the record and 28% is the annual rate of increase for the 2-year 1961 to 1963 period. However, estimates of record indicate that there was a lesser rate of increase for 1962 and a greater rate for 1963. Using figures which are in part estimates, the exhibit of World shows totals which indicate increases of 11% in 1962, 50% in 1963, and 33% in 1964.

[2] This is an estimated figure so far as concerns the latter part of the year. See appendix 1.

APPENDIX 3

(See opposite) ☞

Monthly Total Transatlantic arter Traffic U S. and Foreign IATA Carriers and U S Part 295 Carriers

Month		1963 No Passengers	1963 % of year s total	1964 No Passengers	1964 % of year's total	1965 No Passengers	1965 % of year's total
Jan.	IATA	4,357	1	7,122	2	7,670	
	Pt. 295	0		0		108	
						7,778	2
Feb	IATA	7,181	2	7,500	2	7,256	
	Pt 295	0		0		110	
						7,366	2
Mar.	IATA	14,357		15,958	4	14,059	
	Pt 295	166		0		481	
		14,523	4			14,540	3
Apr	IATA	15,047		22,178	5	22,302	
	Pt 295	202		0		667	
		15,249	5			22,969	5
May	IATA	23,997		36,408		36,380	
	Pt 295	152		325		3,637	
		24,149	7	36,733	9	40,017	9
June	IATA	31,418		39,392		39,803	
	Pt. 295	5,500		11,964		16,759	
		36,918	11	51,356	12	56,562	13
July	IATA	54,704		60,310		59,678	
	Pt. 295	11,502		20,125		26,536	
		66,206	21	80,435	19	86,214	19
Aug	IATA	50,372		61,322		56,876	
	Pt 295	12,554		22,131		30,812	
		62,926	20	83,453	20	87,688	19
Sept	IATA	42,883		46,457		61,100	
	Pt 295	4,193		8,959		12,157	
		47,076	15	55,416	13	73,257	16
Oct	IATA	29,535	9	35,751			) IATA
	Pt 295	0		497		2,07	) 53,876 est
				36,248	9		) for 3 mos.
Nov	IATA	7,357	3	10,999			)
	Pt. 295	0		113		502	)
				11,112	3		) 12 est
Dec	IATA	4,882	2	7,404			)
	Pt. 295	0		216			)
				7,620	2		)
Total	IATA	286,090		350,801		359,000 est	
	Pt 295	34,269		64,330		93,848	
		320,359	100	415,131	100	452,848	100

28800

1635a

(28800)

History and Distribution of Peak Season
Pro Rata Transatlantic Charter Traffic
1957 - 1964

Year	U.S. Carriers			Foreign Flag Carriers			Grand Total
	Route	Part 295	Total	Route	Charter	Total	
1957	10,403	17,123	27,526	11,207	-	11,207	38,733
1958	11,127	23,822	34,949	15,498	-	15,498	50,447
1959	17,240	24,199	41,439	22,432	-	22,432	63,781
1960	23,745	22,301	46,046	83,506	-	83,506	129,552
1961	26,048	37,203	63,251	105,443	-	105,443	168,694
1962	17,791	48,827	66,618	119,090	-	119,090	185,708
1963 1/	9,865	31,676	41,541	160,705	4,335	165,040	206,581
1964 1/	10,684	56,991	67,675	233,516	10,674	244,190	311,865
	Percent of Total						
1957	26.9%	44.2%	71.1%	28.9%	-	28.9%	100
1958	22.1	47.2	69.3	30.7	-	30.7	100
1959	27.0	37.9	64.9	35.2	-	35.1	100
1960	18.3	17.2	35.5	64.5	-	64.5	100
1961	15.4	22.1	37.5	62.5	-	62.5	100
1962	9.6	26.3	35.9	64.1	-	64.1	100
1963	4.8	15.3	20.1	77.8	2.1	79.9	100
1964	3.4	18.3	21.7	74.9	3.4	78.3	100

1/ Includes a limited amount of entity traffic for 1963 and 1964.

TREND OF TOTAL AIR TRAVELERS BETWEEN
THE UNITED STATES AND EUROPE
(In Thousands)

Fiscal Year	Actual Passengers 1/	Trend Values
1957	1,055.2	1,072.6
1958	1,219.8	1,250.2
1959	1,464.8	1,457.2
1960	1,748.9	1,698.4
1961	2,092.0	1,979.6
1962	2,274.7	2,307.3
1963	2,640.3	2,689.3
1964	3,084.4	3,134.6
1965		3,653.5
1966		4,258.4
1967		4,963.5

1/ From Immigration and Naturalization Service.

APPENDIX 5

28802

(28802)

1037a

APPLICANTS' FORECAST OF NUMBER OF ONE-WAY
TRANSATLANTIC CHARTER PASSENGERS

	Number of passengers		Share of market	
	1966	1967	1966	1967
American Flyers	906,662	1,087,996	43,387	79,934
Modern	821,492		20,800	
ONA	391,400 1/		59,200 2/ 27,000 3/	
USOA	1,000,000		28,956	
TIA	526,509 1/	697,242 1/	56,520	83,297
World	642,000 4/ 698,000 5/ 753,000 7/		80,000 2/ 79,000 3/	
Zantop	794,372 4/ 826,146 5/ 889,696 6/ 985,696 8/		19,950	

1/ Market forecast only for pro rata charter passengers during peak season (April-September).
2/ As one of three certificated transatlantic supplemental carriers.
3/ As one of six certificated transatlantic supplemental carriers.
4/ No additional supplemental carrier certificated.
5/ One additional supplemental carrier certificated.
6/ Three additional supplemental carriers certificated.
7/ Four additional supplemental carriers certificated.
8/ Six additional supplemental carriers certificated.

SUMMARY OF APPLICANTS' OPERATING PROPOSALS FOR 1966

	American Flyers			Modern
Aircraft to be used	Electra 188C	Constellation L-1049G	Total	DC-7C
Number of aircraft	2 Electras	5 Constellations	2 Electras 5 Constellations	[illegible]
Aircraft passenger capacity	92	1 (98) 1 (103) 3 (105)	2 (92) 1 (98) 1 (103) 3 (105)	104
Number of one-way flights	208	416	624	2[illegible]
Aircraft miles	1,114,464	2,228,928	3,343,392	1,71[illegible]
Revenue miles				1,5[illegible]
Nonrevenue miles				[illegible]
Passengers			43,387	
Passenger revenue	$2,652,424	$5,015,088	$7,667,512	$4,[illegible]
Operating expense:				
Flying operations			$1,[illegible]59,318	$1,533,161
Maintenance			1,690,457	8[illegible],204
General serv. & adm.			2,465,262	958,123
Depreciation & amortization			423,031	28,[illegible]
Total operating expense			$6,53[illegible],068	$3,[illegible]
Net operating profit			$1,12[illegible],443	$1,[illegible]
Revenue per rev. plane-mile				
Revenue per aircraft mile	$2.38	$2.25		$[illegible]
Revenue per passenger-mile				
Cost per aircraft mile				$[illegible]

SUMMARY OF APPLICANTS' OPERATING PROPOSALS FOR 1966 (CONT'D)

	ONA			TIA
Aircraft to be used	DC-8F55	DC-7 (lease)	Total	DC-8F 1/
Number of aircraft	2 DC-8's	2 DC-7's	2 DC-8's 2 DC-7's	2 DC-8F's 1/
Aircraft passenger capacity	189	99	2 (189) 2 (99)	180 1/
Number of one-way flights			448	314
Aircraft miles	1,121,000	448,000	1,569,000	1,913,000
Revenue miles	928,000	364,000	1,292,000	1,626,540
Nonrevenue miles	193,000	84,000	277,000	286,650
Passengers	50,085	10,192	60,277	56,250
Passenger revenue	$4,972,000	$908,000	$5,880,000	$7,276,000
Operating expenses:				
Flying operations	$ 966,000	$402,000	$1,368,000	$1,632,618
Maintenance	623,000	225,000	848,000	1,176,837
General serv. & adm.	1,780,000	265,000	2,045,000	2,136,092
Depreciation & amortization	42,000	-	42,000	679,462
Total operating expense	$3,411,000	$892,000	$4,303,000	$5,625,009
Net operating profit	$1,561,000	$ 16,000	$1,577,000	$1,652,265
Revenue per rev. plane-mile	$5.36	$2.49		
Revenue per aircraft mile	$4.33	$2.02		$3.80
Revenue per passenger mile	2.835¢	2.520¢		2.485¢
Cost per aircraft mile	$3.18	$1.99		$2.94

1/ Plus 1 DC-8-51 (153-seat) to be used for backup and substitute.

SUMMARY OF APPLICANTS' OPERATING PROPOSALS FOR 1966 (CONT'D)

	USOA	World	Zantop
Aircraft to be used	DC-7C	Boeing 707-373C	DC-7C
Number of aircraft	6 DC-7C's	1 to 3 707-373C's (as required)	3 DC-7C's
Aircraft passenger capacit	104	177 average	95
Number of one-way flights	394	462	210
Aircraft miles	1,339,600	2,195,936	1,365,000
Revenue miles	1,098,472	1,902,376	1,023,750
Nonrevenue miles	241,128	293,560	341,250
Passengers	28,956	81,774 average	8,975
Passenger revenue	$3,020,347	$8,659,665	$2,500,000
Operating expense:			
Flying operations	$1,607,520	$1,802,863	
Maintenance	475,558	1,177,022	
General serv. & adm.	712,578	3,046,054	
Depreciation & amortization	8,400	817,820	
Inflationary provision		90,389	
Total operating expense	$2,804,056	$6,934,148	$2,346,750 2/
Net operating profit	$ 296,291	$1,725,517	$ 153,250
Revenue per rev. plane-mile			
Revenue per aircraft mile		$3.943	
Revenue per passenger-mile			
Cost per aircraft mile		$3.158	

2/ $1,955,625 direct, $391,125 indirect.

PROJECTED TRANSATLANTIC CHARTER YIELDS PER PASSENGER-MILE BY AIRCRAFT TYPE 1/
(in cents)

Carrier	Piston	Prop Jet	Jet
American Flyers	2.267	2.446	1.706 2/ (1967)
Modern	2.796		
ONA	2.068		2.347
USOA	2.168		
IIA			2.224 2.117 3/ (1967) 1.724 4/ (1967)
World			2.087 5/ 2.391 6/
Zantop	2.018		

1/ Data relates to 1966 except where indicated otherwise.
2/ With 251-seat configuration.
3/ With 180-seat configuration.
4/ With 247-seat configuration.
5/ With 189-seat configuration.
6/ With 165-seat configuration.

Note: It was assumed that all aircraft would be 100 percent occupied.

APPLICANTS' FINANCIAL STATUS

APPENDIX 9

	Am. Flyers (March 31, 1965)	Modern (Sept. 30, 1965)	ONA (July 19, 1965)	TIA (April 30, 1965)	USOA (Dec. 31, 1964)	World (Sept. 30, 1965)	Zantop (April 30, 1965)
Current assets	$ 829,156	$ 993,213	$1,847,222	$ 1,809,033	$171,290 1/	$16,554,162	$2,232,463
Investments and special funds	-	15,784	3,125	853,182	392,840	446,500	19,432
Deposits on aircraft	-	-	1,492,648	902,098	-	-	-
Property and equipment	3,433,807	892,137	229,288	11,989,043	132,412	20,561,531	1,944,847
Deferred charges	52,612	99,340	144,263	282,461	5,474	-	826,043
Total assets	$4,315,575	$2,000,474	$3,716,546	$15,835,817	$702,016	$37,562,193	$5,022,785
Current liabilities	$1,744,817	$ 838,142	$ 204,188	$ 4,565,987	$941,737	$ 6,657,306	$2,620,985
Long-term debt and other liabilities	2,378,497	1,029,902	2,004,818	6,728,442	25,164	13,326,894	539,400
Deferred credits	-	5,947	-	219,247	-	4,151,007	83,724
Stockholder equity	192,261	126,483	1,507,540	4,322,141	(264,885)	13,426,986	1,778,676
Total liability and net worth	$4,315,575	$2,000,474	$3,716,546	$15,835,817	$702,016	$37,562,193	$5,022,785

1/ Excludes $100,000 tentative reserve to provide for possible bad debts or uncollectible accounts, collection commissions, and other related expenses.

ANNUAL INCOME STATEMENTS

APPENDIX 10

	Air Flyers (Sept. 30, 1965)	Modern (Sept. 30, 1965)	ONA (Dec. 31, 1963)	TTA (Sept. 30, 1965)	USOA (June 30, 1964)	World (Sept. 30, 1965)	Zantop (Sept. 30, 1965)
Operating revenue	$7,510,101	$1,607,255	$3,377,370	$18,853,163	$2,678,899	$29,859,200	$24,075,597
Operating expense:							
Flying operations	$2,605,393	$ 573,123	$1,798,767	$ 5,031,149	$1,271,396	$ 7,581,261	$ 9,279,248
Maintenance	1,713,184	279,132	805,621	3,578,629	484,661	5,430,159	7,993,705
General serv. & admin.	1,909,905	424,764	1,388,793	2,974,115	1,465,856	4,143,076	4,007,081
Depreciation & amortization	900,650	90,147	308,596	1,433,076	157,873	2,284,112	2,338,873
Total operating expense	$7,129,132	$1,367,166	$4,301,777	$13,016,970	$3,379,786	$19,438,608	$23,618,907
Operating profit (loss)	$ 380,968	$ 240,088	$ (924,407)	$ 5,836,194	$ (700,887)	$10,420,592	$ 456,690
Nonoperating income (expense)	$ (174,055)	$ (15,351)	$ (66,789)	$ (984,594)	$ 269,088	$(1,176,924	$ (278,351)
Net income before income tax	$ 206,914	$ 224,736	$ (991,197)	$ 4,851,599	$ (431,799)	$ 9,243,668	$ 178,338
Income taxes	$ 96,866	$ 40,822		$ 2,558,213		$ 4,174,141	$ (44,986)
Net income after income taxes	$ 110,048	$ 183,914	$ (991,197)	$ 2,293,386	$ (431,799)	$ 5,069,527	$ 223,323
No. of air transport. employees	187	69	24	214		390	998

Source: Carrier quarterly reports filed with the Board.

APPENDIX 11

COMPARISON OF RATES CHARGED BY PAN AMERICAN AND TWA WITH TIA's RATES

New York-Paris Market

Class of service	Round trip fare	Fare per rev. psgr. mile
Pan American and TWA:		
First class	$754.30	10.38¢
Peak economy	526.30	7.24
Off-peak economy	440.80	6.06
21-day excursion	341.80	4.70
TIA:		
1965 peak-season pro rata charter	$274.38	3.77¢
Proposed pro rata charter:		
1966	$180.66	2.485
1967	$147.44	2.028

(28811)

28811

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corporation, Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc.;

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective

3. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied;

4. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON,
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

(28812)

28812

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORPORATION

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct

business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may

be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the

(28813)

privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on and shall terminate April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on

28814

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

OVERSEAS NATIONAL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct

business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds,

28815

after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the

privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on and shall terminate April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on

(28816)

28816

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct

business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds,

after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the

(28817)

privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on and shall terminate April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the Seal of the Board to be affixed hereto, on the

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on

28818

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Economic Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct

business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds,

after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the

privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on and shall terminate April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on

(29582)

29582

Order No. E-24240

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Served: September 30, 1966

DOCKET 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

Decided: March 11, 1966

Authority to engage in transatlantic inclusive tour charters, subject to the terms, conditions and limitations of Part 378 of the Special Regulations, awarded to Capitol Airways, Inc., Saturn Airways, Inc., and any supplemental air carrier subsequently certificated in the *Reopened Transatlantic Charter Investigation,* Docket 11908, *et al.,* such authority to terminate on April 18, 1969.

Part 378 of the Special Regulations amended to cover the operation of inclusive tour charters in the transatlantic market.

Part 295 of the Economic Regulations amended so as to include inclusive tour charters within the definition of "charter flight."

(29582, 29583, 29584)

APPEARANCES:

Robert M. Beckman for American Flyers Airline Corporation.

Albert F. Beitel and *William A. Wildwack, Jr.* for Modern Air Transport.

Howard S. Boros for Overseas National Airways.

Robert M. Lichtman and *Peter O. O'Connell* for Saturn Airways and Capitol Airways.

Clayton L. Burwell for Trans International Airlines, Inc.

Martin L. Friedman and *Judah Best* for United States Overseas Airlines.

Jerrold Scoutt, Jr. for World Airways.

James H. French for Zantop Air Transport.

Hubert Schneider, Elihu Schott and *Jerry W. Ryan* for Pan American World Airways.

29583

Joseph F. Healy, Jr. and *Edmond E. Harvey* for Trans World Airlines.

Charles A. Hobbs for American Society of Travel Agents.

Howard G. Feldman for the Bureau of Operating Rights.

29584

OPINION

BY THE BOARD:

By Order E-22686, adopted September 23, 1965, the Board reopened the *Transatlantic Charter Investigation*, Docket 11908, *et al.*, to determine whether the public convenience and necessity require the grant of inclusive tour authority to Capitol Airways, Inc. (Capitol), Saturn Airways, Inc. (Saturn), and any supplemental air carrier subsequently certificated in the reopened proceeding now in

progress.[1] Capitol and Saturn are presently operating pursuant to supplemental certificates authorizing transatlantic charter operations, under conditions which preclude charters to persons engaged in the sale of individually ticketed transportation to members of the general public.[2] The proposed inclusive tour authority would permit those carriers to charter to tour operators, who would utilize the chartered aircraft in providing packaged tours to groups formed from the general public. There is also pending before the Board, in another phase of this proceeding, the question of certification of additional supplemental carriers to provide transatlantic charter services,[3] and our determination herein will also decide the question of whether

29585

any additional carriers who may be so certificated should receive inclusive tour authority. The question of inclusive tour authority in geographical areas other than the transatlantic is treated in the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*[4]

In response to Order E-22686, briefs were filed by nine supplemental air carriers,[5] two trunkline air carriers,[6] the

---

[1] This action was taken in light of the fact that the Board was presented with similar issues in the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*

[2] See Appendix A to Orders E-20530 and E-20531, October 8, 1963.

[3] See Order E-21966, March 30, 1965.

[4] See Orders E-23350 and E-24237.

[5] American Flyers Airline Corp., Modern Air Transport, Inc., Overseas National Airways, Inc., Saturn-Capitol (joint brief), Trans International Airlines, Inc., United States Overseas Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

[6] Trans World Airlines, Inc. (TWA) and Pan American World Airways, Inc. (Pan American).

American Society of Travel Agents, and Bureau Counsel. Oral argument was held before the Board on October 13, 1965, and the matter now stands submitted for decision.

Upon consideration of the record, we now conclude that the Board's earlier decision of October 8, 1963,[7] should be reversed and that inclusive tour charters should be authorized. Accordingly, we will issue to Capitol and Saturn amended certificates providing for inclusive tour authority, which shall expire on April 18, 1969, the date of the expiration of their basic transatlantic authority. We will also authorize inclusive tours for any other supplemental carriers to whom transatlantic charter certificates are given, subject to an April 18, 1969, expiration date.[8]

29586

The 1963 decision and subsequent events. The Board's original denial of inclusive tour charter authority was bottomed upon the examiner's recommended decision to that effect. The examiner had concluded that while inclusive tours would tap new markets, particularly among lower income groups, they would also expose Pan American and TWA, the two certificated transatlantic route carriers, to diversion of a substantial volume of their business. In his view, the inclusive tour proposal, taken together with

---

[7] Orders E-20530 and E-20531, Appendix A.

[8] TWA and Pan American raised a question as to whether the present stage of this proceeding is to be considered as a reconsideration of the earlier decision or, as suggested in our order of reopening, a reexamination of a decision that had not yet become final because of lack of Presidential approval. We need not reach this question since it is clear that in either event the Board is entitled to reconsider the issue at this time.

(29586, 29587)

the split charter proposal,[9] would have serious competitive implications which might be overlooked in the interest of developing new areas of air travel, if the transatlantic services of the route carriers were in a state of normalcy. However, in view of the poor earnings picture for these carriers for 1961 and prior years, the examiner concluded that the inclusive tour authority should not be authorized. The Board affirmed these conclusions, stating that the diversion potential was "not warranted by the attendant benefits of allowing such charters *at the present time*." [10]

At that time, the economic condition of our U. S. flag transatlantic route carriers was characterized by extremely low earnings in the recent past and an uncertain outlook for the future. There had been a steady downward trend in U. S. flag carrier participation in the North Atlantic

29587

route market through the years. At the same time, the carriers' earnings for the several years prior to the Board's decision were well below that which would be required to sustain healthy operations for any long-term period. Thus, as shown in the table on page 6, in each year during the period 1958 through 1962 Pan American's earnings were well below a reasonable level, and in all but the last of those years, TWA suffered net losses.

---

[9] This was the proposal to permit carriers to combine two separate groups on one aircraft. The Board determined to include such authorizations in the certificates issued to the carriers. See Orders E-20530 and E-20531, Appendix A, October 8, 1963, pp. 32-40.

[10] Orders E-20530 and E-20531, Appendix A, p. 34, underscoring added.

The years 1958-1962 encompassed the period of inauguration of service with jet aircraft and the integration of sizeable jet fleets. As in other geographical areas, including the U. S. domestic air transportation system, the increased capacity associated with jet aircraft acquisitions substantially exceeded the carriers' traffic requirements, resulting in declining load factors. Moreover, there was the continuing prospect of mounting capacity, particularly in the light of the fact that their international competitors were also purchasing jets in substantial quantities, and there were serious doubts as to where the carriers would find passengers to fill the empty seats. The problems were compounded by the fact that the number and strength of the foreign flag competitors had increased significantly. Indeed, the apparent plight of the U. S. flag carriers caused such concern as to give rise to radical proposals for revisions of the transatlantic route structure.[11] It was in this context that the Board was unwilling to embark on an experiment that could result in diversion of revenues from the U. S. flag carriers, even though, as the Board recognized, there had been some recent improvement in carrier earnings.

29588

However, we now have the full results for the years 1963 through September 30, 1965. These results show a sharp improvement over the period 1958-62. The downward trend in load factors has been reversed and earnings have dramatically improved. For example, whereas TWA suffered net losses during every year in the period 1958-61, its net

[11] See Order E-18301, May 4, 1962, discussed by the examiner in his recommended decision at pp. 80-81.

annual earnings during the period 1963 through the 12 months ended September 30, 1965, ranged between 19 and 27 million dollars. Similarly, the combined return on investment for both carriers, which had been negative for TWA and marginal for Pan American in the period 1958-61, has now risen to well above the 10.25% rate of return which we have found reasonable for comparable domestic trunkline operations,[12] reaching a high point of over 25% in the case of TWA in 1965.

29589

Financial and Operating Results of Pan American (Atlantic Division) and TWA (International) for the Period 1958–September 30, 1965

	Load Factor		Net Earnings (000)		Return on Investment	
	PAA	TWA	PAA	TWA	PAA	TWA
1958	59.6%	54.2%	$ 3,136	($ 3,839)	3.80%	– 5.87%
1959	69.7	59.7	8,731	(4,445)	6.75	– 6.63
1960	61.3	58.9	8,300	(6,802)	6.48	–15.77
1961	49.2	47.3	4,933	(13,711)	4.31	–11.17
1962	48.1	48.9	6,671	6,812	5.65	12.76
1963	48.7	46.9	17,107	19,303	11.80	23.58
1964	53.0	54.4	14,077	17,671	10.68	20.16
Year ending Sept. 30, 1965	52.5	55.1	20,774	27,448	11.76	25.87

Source: CAB Handbook of Airline Statistics, Form 41 Reports.

[12] *General Passenger Fare Investigation*, Order E-16068, November 25, 1960.

It is interesting to compare the most recent results with the year 1962, the last calendar year for which the Board had information at the time of its prior decision. Thus, although the 1962 results were more favorable than those of the earlier years, load factors for Pan American and TWA in the 1965 period were 9.1% and 12.7% above those for 1962, and net earnings were 211% and 303% higher.

Thus, contrary to our fears in 1963, the basic financial and operational soundness of Pan American and TWA may no longer be questioned. These carriers are both well established in the transatlantic market, and rank first and second in terms of passengers carried. The transatlantic operations of each carrier are supported by and integrated with large air transportation networks in other geographical areas. They are well financed and well equipped and, while they are engaged in keen competition with a large number of foreign air carriers, such competition is conducted within a regulatory framework, including collective rate controls through IATA as well as regulation by the Board, which gives reasonable assurance of profitable operations. The difficulties experienced by Pan American and TWA which so heavily influenced us in our earlier decision, must be regarded as being of a transitory nature, similar in large part to problems which were being faced by airlines generally, growing out of the transition from piston to jet equipment.

In sum, it is clear beyond any reasonable doubt that the prime basis upon which we rejected inclusive tour authority in our earlier decision has disappeared with the passage of time. In our judgment, therefore, the U. S. flag route operators are well able to absorb the modest amounts of diversion that may result from the operation of inclusive tour charters by the supplemental carriers.

Diversion. Our prior conclusions on diversion were based primarily on two considerations. The first of these considerations was the extent to which travel agents, upon whom Pan American and TWA depend heavily for the sale of air transportation, would continue to be a sales force for

29591

those carriers if they are authorized to solicit individual members of the public for low-cost inclusive tours on chartered aircraft. In this regard, the route carriers argue that travel agents who have committed themselves to inclusive tour charters will have a powerful economic incentive to promote such charters in order to fill up their planes, and that they will therefore tend to divert traffic which would normally travel on the scheduled carriers. However, while some diversion of this sort may occur, it does not appear that the economic incentives of the vast bulk of travel agents will be affected. There is no basis for the assumption that the typical travel agent will undertake tour operations for his own account. Organizing such tours will normally involve substantial commitments, as well as financial risks, in connection with chartering aircraft, reserving hotel space and the like, as well as heavy marketing and promotional expenditures. Charter tour operations will be undertaken primarily by the larger or wholesale travel agents who possess the facilities and financial resources which are required in order to package and market the tours. It is not to be expected, therefore, that the bulk of the travel agents will be subject to the economic pressure of having to fill chartered aircraft. On the contrary, since the agent's commission is based on a percentage of the tour fare, the individual travel agent will have a greater incentive to sell the higher priced tour on a scheduled carrier.

The second factor upon which we based our concern with potential substantial diversion was the significant fare dif-

29592

ferential between inclusive tours via the scheduled carriers and similar tours via supplemental carriers. The examiner

noted that, since the route carriers could not solicit the general public under their group fare tariff, the saving to a traveler on a round-trip New York-London trip would amount to approximately $200, based upon the standard economy IATA fare, and the Board felt that this $200 differential would "increase the diversion potential to a degree not warranted by the attendant benefits of allowing such charters at the present time."[13] In reaching this conclusion, we took as given the existing fare structure, whereas it is apparent that the fare structure is a matter well within the control of the scheduled carriers. Obviously, among the means which the route carriers have to meet the additional competition offered by inclusive tours is their own ability to offer promotional fares which will appeal to persons who would not otherwise have the means to pay the higher economy fare and who would prefer to use the services of the scheduled carriers. Indeed, the IATA carriers now offer various promotional fares that are significantly below the standard economy fare. These include a 21-day round-trip excursion fare of $300 for a New York-London trip. The various promotional fares in the transatlantic market now account for the bulk of the passengers traveling in the economy class during the peak season.[14]

---

[13] Orders E-20530 and E-20531, Appendix A, p. 34.

[14] On the basis of statistical data supplied to the Board by TWA and Pan American during the 1964 peak season, transatlantic passengers traveling on the various promotional fares of those carriers (low-level economy, 21-day excursion and group fares) totaled 236,990, compared with 177,628 who utilized peak economy fares. These figures cover the period May 17-September 26, 1964, with the single exception of TWA's traffic between July 5 and August 22, a period for which that carrier failed to submit data.

29593

In addition, the members of IATA have agreed to effectuate in the 1966 summer season a tour-basing fare under which travel agents selling inclusive tours on scheduled carriers could offer a reduced air fare of $270 in the New York-London market.[15] Thus, it is apparent that the $200 differential relied upon in our earlier opinion considerably overstates the price advantage of an inclusive tour charter.

Moreover, price is clearly not the sole factor influencing a traveler's decision as to the choice of carrier or service and when all factors are taken into consideration, we believe that it is unlikely that the operation of inclusive tour charters can pose any significant threat to the established route operators. The services offered by the scheduled carriers are clearly superior to those which can be provided by the supplementals. Thus, persons who wish to take advantage of the low-cost inclusive tours necessarily must sacrifice the ability to select from among a large number of schedules. They must subject themselves to the rigidities of a fixed itinerary, as well as to traveling and sharing facilities with a group of strangers for an extended period of time.

29594

Moreover, the selling resources of the route carriers, in terms of travel agency coverage, ability to advertise in mass media, etc., dwarf the capability of the supplemental carriers, and the route carriers possess the initial advantage of established market reputations among travelers. In

[15] The fact that the carriers have agreed upon these low promotional fares is striking evidence of their own collective conclusion that low-fare services, appropriately restricted, can tap new markets without unduly diverting from their standard fare services.

short, there is no reason to believe that the diversion which may take place cannot be absorbed by normal traffic growth in the transatlantic market.[15a] And in our judgment, this diversion would not justify withholding from the supplemental carriers authority to conduct an experimental service for a temporary period, in light of the potential public benefits which may flow from inclusive tour charter services.

Need for inclusive tours. As the examiner found in this proceeding, the testimony of travel agents appearing on behalf of various applicants and the American Society of Travel Agents indicates that a program designed to enable travel agents to charter aircraft for transportation of inclusive tours would tap a new low-income travel market which had not been reached by the scheduled services of the IATA carriers. The examiner reviewed the evidence concerning inclusive tour charters operated from Great Britain which are in major respects comparable to the inclusive group tours in issue in this proceeding. He noted the remarkable growth in British inclusive tours from 45,995 passengers in 1956 to 198,689 passengers in 1961.[16] The examiner also discussed the carriers' forecasts concerning

the traffic generating effect of inclusive tour charters. While conceding that there was no reasonable basis upon which an accurate appraisal of traffic could be made, he concluded

---

[15a] The total annual traffic growth for all air carriers in the transatlantic market was 183,629 passengers from 1962 to 1963, and 617,164 passengers from 1963 to 1964.

[16] The British market has continued to grow impressively after 1961. See recommended decision of Examiner Robert L. Park in the *Supplemental Air Service Proceeding,* Docket 13795, *et al.,* served August 27, 1965, p. 57.

that "it is virtually certain that there is a large potential for all-expense tour charters," and that "a new low-income stratum of traffic, untouched by the economy fares, could be stimulated thus swelling the total charter potential, including planeload charters, well beyond the 1961 experience."[17] We believe the examiner's findings in this regard are amply supported by the record in the proceeding.

Not only do inclusive tours offer the potential of tapping a large new market to air travel, but they will also afford an additional source of income to the supplemental carriers. It must be remembered that these carriers have but limited areas in which to operate. They are denied the right to engage in individually ticketed service.[18] The supplemental carriers must survive on their charter business alone. In our judgment, they should not be excluded from a significant segment of the charter market which they are peculiarly well equipped to serve.

29596

Balance of payments. The route carriers argue that to the extent that inclusive tours generate new low-cost air travel, the tours would adversely affect the balance of payments. TWA cites a recent CAB staff study[19] to the effect that travel abroad by U. S. residents always contributes to the balance of payments deficit, whether or not U. S. flag or foreign flag carriers are used. Both TWA

[17] Recommended decision, p. 58.

[18] Except for short-term operations under unusual circumstances pursuant to section 417 of the Act.

[19] "The Impact on the Balance of Payments of the Air Transport and Aircraft Industries," Bureau of Accounts and Statistics, April 27, 1965.

and Pan American contend that in the event the Board wishes to reconsider its previous determination on inclusive tours, it should reopen the record to take further testimony on the balance of payments question. We are not persuaded that alleged problems regarding balance of payments warrant withholding inclusive tour authority in the transatlantic market.

A similar argument was made in the foreign phase of the *Supplemental Air Service Proceeding*. We there found, in substance, that the maximum potential gold outflow would not be significant even if the unlikely assumption were made that no foreign travel would be generated to this country by the inclusive tour program; that inclusive tours would in fact have a substantial generative effect on foreign travel to the United States because foreign travelers are especially sensitive to price and will be attracted by the predetermined cost features of inclusive tours.[20] We also found that there was no reason to believe that the foreign market would not be vigorously promoted, since the carriers will have every incentive to develop such operations. We pointed out that the regulations governing

29597

inclusive tour charters will require the reporting of data which will enable us to assess the extent to which foreign travel is being promoted, and we called attention to the fact that if these data indicate that inbound travel is not being adequately promoted, the Board would be in a position to take necessary action, including the suspension of

[20] There is evidence in this proceeding to the same effect. See exhibits ASTA-10, ASTA-18, ASTA-27 and J-B.

inclusive tour authority pursuant to section 401(g) of the Act. In addition, we stressed the inequities involved in forcing the supplemental carriers to bear the brunt of a balance of payments policy while the route carriers remain free to promote and stimulate travel abroad. We believe the foregoing conclusions, as well as the underlying findings in the *Supplemental Air Service* case, are equally applicable here, and we adopt them as part of this opinion.[21]

In view of the foregoing, we find that no purpose would be served in reopening the record to take testimony on balance of payments, as suggested by the route carriers. In the last analysis, since the impact on gold flow would depend to a large extent on the promotional efforts of the carriers and the tour operators, additional evidence on the

29598

balance of payments issue cannot be conclusive. We believe the needed authorization should not be deferred for such a hearing, and that the over-all interest in the gold problem will be amply protected by the temporary nature of the authorizations, the reporting requirements which we are imposing, and our ability to take action prior to

[21] Order E-24237, March 11, 1966, pp. 5-9. It is true that the evidence in the instant proceeding indicates a greater volume of potential transatlantic inclusive tour traffic than is the case in the other foreign geographical areas involved in the *Supplemental Air Service Proceeding*. Thus, the estimate of one carrier suggests a transatlantic inclusive tour market in the initial year of operations of approximately 25,000 to 30,000 passengers. If all of these passengers were U. S. originated, the potential gold outflow would be in the neighborhood of 24 million dollars, based upon an adverse balance of $800 per traveler. See "The Impact on the Balance of Payments of the Air Transport and Aircraft Industries," note 19, *supra*, p. 33. It is clear, however, that a substantial portion of these passengers would originate in Europe.

the expiration of the temporary authorizations if need be. In the meantime, the experience which we will obtain during the experimental period will afford a more solid basis for assessing the impact on balance of payments than would be afforded by an evidentiary hearing at this point.

Terms and conditions. Part 378 of the Board's Special Regulations, issued in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding, supra,* grants indirect air carrier authority to tour operators and sets forth the regulatory provisions governing the conduct of inclusive tour charters by tour operators and supplemental air carriers. In adopting Part 378, we considered carefully the nature of the regulatory provisions which should govern the tour operations.[22] There has been no showing in the instant proceeding of any special problems in the transatlantic area which warrant different treatment from that afforded other geographic areas. Accordingly, we are concurrently herewith issuing an amendment to Part 378 making it appli-

29599

cable to transatlantic inclusive tour charters.[23]

---

[22] See Order E-23350, pp. 16-21. Part 378 was originally proposed in a rule making proceeding (SPDR-6, January 5, 1965), during the course of which the regulation was expanded to include transatlantic operations. (SPDR-6B, October 11, 1965). Comments with respect to the latter action were submitted, largely by the same parties involved herein, and have been considered by the Board.

[23] We are also amending, contemporaneously, Part 295 of the Board's Economic Regulations to bring inclusive tour charters within the definition of "charter flight."

The tour authority granted hereunder will terminate upon the termination of the transatlantic charter certificates of Capitol and Saturn. These certificates expire by their terms on April 18, 1969. With respect to any other carriers subsequently certificated in this proceeding to perform transatlantic operations, we will provide that their inclusive tour authority will terminate on the same date. We will thus be afforded a test period, following which we shall review the tour program to see if it has fulfilled its promise. In the meantime, the Board's rule making powers will enable it to modify the terms and conditions governing the tour operations if that is necessary in order to protect other segments of the air transportation industry.

Procedural questions. The route carriers argue that further hearings should be held if the Board is disposed to re-examine its earlier determination concerning inclusive tours. It is pointed out that the record was developed in 1962 based on 1961 and earlier data, and it is urged that the record has become stale. However, we find no sound basis for a reopening. Full and fair hearings have been held at which all parties were given an opportunity to develop the record on all relevant matters pertaining to this issue. Although the Board has on occasion found it necessary to reopen the record where evidence transpiring subsequent to the close of the record required exploration in an evidentiary hearing, the Board has never considered that a record should be reopened merely because it

is a few years old. The route carriers have not come forward with any showing that a reopened record would point

to a different conclusion from that adopted herein. Thus, there is no reason to believe that more recent evidence will show that the market for low-cost package tours is less than it was in 1961-62; that such tours would be relatively more diversionary of scheduled traffic; or that the route carriers are less capable now to cope with the competition from inclusive tours. On the contrary, the data of which we have taken official notice suggest rather that the more recent evidence reinforces our conclusions that grant of inclusive tour authority would be in the public interest.[24]

We have considered the remaining contentions of the parties[25] and find that, except to the extent indicated herein, they should not alter the results we have reached.

Accordingly, in view of the foregoing and upon consideration of the record, we find:

1. That the public convenience and necessity require

29601

that the transatlantic certificates of Capitol and Saturn be amended to provide for inclusive tour charter authority.

---

[24] In reaching our conclusions herein we have relied solely upon the record which was before us in 1963, supplemented by Form 41 reports and other data of which we may take official notice. We, therefore, do not reach the question as to whether we may lawfully rely upon materials from the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*

[25] These contentions include (1) the issue of our legal authority to authorize inclusive tours, which has been considered at length in our decision in the domestic phase of the *Supplemental Air Service Proceeding*, Order E-23350, March 11, 1966, pp. 4-13, as well as in the recommended decision of Examiner Park, and (2) the argument that the record must contain more evidence as to the details of the tours to be conducted by the tour operators, which was also disposed of by Examiner Park at pp. 49-51 of his decision.

(29601, 29602)

2. That the public convenience and necessity require that inclusive tour charter authority be awarded to any supplemental air carrier subsequently certificated in the *Reopened Transatlantic Charter Investigation,* Docket 11908, *et al.*, such authority to expire on April 18, 1969.

3. That the public interest requires the amendment of Part 295 of the Economic Regulations and Part 378 of the Special Regulations.

Appropriate orders will be entered.

MURPHY, Vice Chairman, and MINETTI, Member, concurred in the above opinion. GILLILLAND, Member, dissented, filing the attached statement. MURPHY, Chairman, and ADAMS, Member, did not take part in the decision.

29602

GILLILLAND, Member, Dissenting:

The inclusive tour aspects of this decision are subject to the frailties present in Order E-23350, March 11, 1966, and Order E-24237, March 11, 1966, and, as my stated reasons for dissent in those cases are applicable here, I incorporate them by reference.[1] I will supplement them briefly.

This decision cites section 417 of the Federal Aviation Act. Section 417 found its way into the Act as a part of Public Law 87-528, 87th Congress, July 10, 1962. The section indeed demonstrates the care exercised by the Congress in guarding the individual ticketing authority in air transportation, but which the Board here distributes gratis

[1] An example of regularly scheduled transportation authorized to tour operators under this decision is: New York-London-Paris-Rome.

by means of the tour operator device. The same is true of section 9 of Public Law 87-528.

Prior to the enactment of that law the supplemental carriers, previously defined only by the Board, performed certain limited individually ticketed services. Section 9 provided:

> The Civil Aeronautics Board may, if it finds such authorization to be in the public interest to permit an orderly transition to an all-charter operation, authorize the holder of any certificate or other operating authority issued by the Board under this Act or under section 401(d)(3) of the Federal Aviation Act of 1958 to perform individually ticketed and individually waybilled services in air transportation during the two-year period beginning on the date of enactment of this Act, subject to such terms, conditions, and limitations as the Board may prescribe. . . .

The Board's authority under this provision expired under its terms on July 10, 1964.

29603

Section 417 empowers the Board, in the event of temporary insufficiency of air transportation between points in the United States, or of temporary requirements between points at least one of which is not regularly served by any air carrier, and pursuant to investigation, notice and opportunity to protest, and findings, to grant to a supplemental carrier special authorization to engage in air transportation which shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days. It is required that the special authorization:

> . . . shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route.

Section 417 remains in effect, but it includes all of the authority which the Board has in the matter.

I must observe also that the Board has not correctly read the *Transatlantic Charter Investigation*[2] decision which it here overrules on the ground that "it is clear beyond any reasonable doubt that the prime basis (low earnings of Pan American and TWA) upon which we rejected inclusive tour authority in our earlier decision has disappeared with the passage of time." This was not the "prime basis" for the decision and the carriers' earnings have by no means stabilized sufficiently to justify the unlimited exposure to which they will be subjected by this case. In fact over the 1958-65 period Pan American's rate of return was only 7.6

percent and 5.3 percent for TWA. Among the important reasons for the decision not now referred to by the Board was the lack of showing of need. The same lack is among the many inadequacies which are present here. There is not one shred of evidence that there is a public need for all-expense tour charters. In fact, the record shows that all-expense tours do not supplement scheduled route services but merely duplicate them at cutrate fares.

/s/ WHITNEY GILLILLAND

---

[2] Issued as Appendix A to Supplemental Opinion and Order E-20530 and E-20531, adopted February 24, 1964.

Order No. E-24240

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL EXPENSE TOUR PHASE)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That amended certificates of public convenience and necessity for transatlantic supplemental air transportation in the forms attached hereto be issued to Capitol Airways, Inc., and Saturn Airways, Inc.

(29605, 29606)

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That inclusive tour charter authority be awarded to any supplemental air carrier hereafter certificated in the *Reopened Transatlantic Charter Investigation,* Docket 11908 *et al.,* such authority to terminate on April 18, 1969.

29606

4. That this order shall be effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

September 27, 1966

29607

Order No. E-24240

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to en-

gage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event

the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24240), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24240.

(29609)

29609

Order No. E-24240

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the

proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

(29610)

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24240), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24240.

29611

Order No. E-24241

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 11th day of March, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 295 and 378 of the Board's Regulations, which are attached hereto and made a part hereof.[1]

2. That said amendments shall be effective on November 26, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

---

[1] For administrative convenience we have combined into a single amendment to Part 378 the revisions required by the decision in the instant proceeding as well as the decision in the foreign phase of the *Supplemental Air Service Proceeding*, Docket 13795 *et al.*

(29612)

Regulation No. ER-475

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Economic Regulations
Amendment No. 7 to Part 295
Effective: November 26, 1966
Adopted: March 11, 1966

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

REDEFINITION OF "CHARTER FLIGHT" TO INCLUDE INCLUSIVE TOUR CHARTERS

The Board has determined in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et al.*, to grant inclusive tour charter authority to Capitol Airways, Inc., Saturn Airways, Inc., and any supplemental air carrier subsequently certificated in the transatlantic market in that proceeding.[1] Such authority involves the charter of supplemental carrier aircraft to tour operators who in turn sell the inclusive tours to individual members of the general public.[2] It therefore becomes necessary

[1] Order E-24240.

[2] Part 378 of the Board's Special Regulations, which contains the regulatory provisions governing inclusive tour operations, is being amended concurrently herewith to cover transatlantic inclusive tours.

to contemporaneously expand the definition of "charter flight," as contained in Part 295 of the Economic Regulations, to include inclusive tour charters.[3] Inasmuch as the question of whether such charters should be authorized in

the transatlantic market has been fully litigated in Docket 11908, *et al.*, we believe that further notice and public procedure on this amendment are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 295 of its Economic Regulations effective November 26, 1966, as follows:

1. By amending §295.2(b) to read as follows:

§295.2 *Definitions.*

As used in this part, unless the context otherwise requires—

* * * * *

(b) "Charter flight" means air transportation performed by a direct air carrier on a time, mileage or trip basis where (1) the entire capacity of one or more aircraft has been engaged for the movement of persons and their personal baggage—

(i) By a person for his own use (including a direct air carrier when such aircraft is engaged solely for the trans-

[3] In view of the extensive application and reporting requirements imposed by Part 378, the operation of inclusive tour charters is being exempted from the condition that a "Statement of Supporting Information" be executed prior to any supplemental air transportation performed pursuant to Part 295.

portation of company personnel or commercial passenger traffic in cases of emergency);

(ii) By a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services); or

(iii) By a tour operator as defined by Part 378 of this chapter; or (2) one-half the capacity of an aircraft has been engaged by a person for his own use or by a representative or representatives of a group for the use of such group and the remaining half of the capacity of such air-

craft has been engaged by another person for his own use or by a representative or representatives of a second group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services).

With the consent of the charterer, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

2. By revising §295.5(a) to read as follows:

§295.5 *Records and record retention.*

(a) Prior to performing any supplemental air transportation pursuant to this part, the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof: *Provided,* That this requirement shall not apply to inclusive tour charters.

(Section 204(a) of the Federal Aviation Act of 1958; 72 Stat. 743; 49 U. S. C. 1324. Interpret or apply sections 401 (d)(3), 401(n); 76 Stat. 143, 144; 49 U. S. C. 1371.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 7 to Part 295 effective April 30,1964.

(29615)

29615

Regulation No. SPR-16

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Special Regulations
Amendment No. 2 to Part 378
Effective: November 26, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN AIR TRANSPORTATION

Part 378 of the Board's Special Regulations (14 CFR Part 378), which contains the regulatory provisions governing the operation of inclusive tour charters, was originally issued[1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to inclusive tours in interstate air transportation.

To correspond with authorizations being awarded as a result of the Board's final decisions in the foreign and overseas phase of the *Supplemental* case[3] and in the *Re-*

[1] Regulation No. SPR-14, adopted March 11, 1966, and published in 31 F. R. 4779.

[2] Order E-23350.

[3] Order E-24237.

opened Transatlantic Charter Investigation (All-expense Tour Phase), Docket 11908, *et al.*,[4] which are being issued

29616

concurrently herewith, we are amending Part 378 to expand its coverage to inclusive tours in overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceedings, and because parties to the rule making were heretofore given the opportunity to comment on this matter,[5] further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 378 of its Special Regulations effective November 26, 1966, as follows:

1. By revising §378.1 to read as follows:

§378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the

[4] Order E-24240.

[5] Part 378 as originally proposed pertained to interstate and *overseas* air transportation (Notice of Proposed Rule Making SPDR-6, January 5, 1965, 30 F. R. 281). Moreover, the proposed regulation was amended to cover *foreign* air transportation (Supplemental Notice of Proposed Rule Making, SPDR-6B, October 11, 1965, 30 F. R. 13077). Comments concerning both of these Notices were received, as set forth in SPR-14, *supra*, and have been considered by the Board.

(29616, 29617)

Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this regulation shall not be construed as

limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

2. By revising §378.2(a) to read as follows:

§378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended, (72 Stat. 737; 49 U. S. C. 1301; 72 Stat. 743; 49 U. S. C. 1324; 72 Stat. 754 as amended by Stat. 143; 49 U. S. C. 1371; 72 Stat. 768; 49 U. S. C. 1379; 72 Stat. 770; 49 U. S. C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U. S. C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 378 effective May 13, 1966.

29618

Order No. E-24242

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Served: September 30, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

Decided: April 5, 1966

Certificates issued to American Flyers Airline Corp., Overseas National Airways, Trans International Airlines, and World Airways authorizing, for a period extending through April 18, 1969, supplemental air transportation of persons and their personal baggage between points in the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia as far east as (and including) India, on the other hand, subject to the terms, conditions, and limitations of Part 295 of the Economic Regulations and Part 378 of the Special Regulations.

APPEARANCES:

Same as in the Recommended Decision and, in addition, the following:

Leonard N. Bebchick for Saturn Airways.

(29619)

29619

OPINION

BY THE BOARD:

By Order E-21966, March 30, 1965, the Board reopened the *Transatlantic Charter Investigation,* Docket 11908 *et al.,* to determine whether the public convenience and necessity require the certification of one or more supplemental air carriers, in addition to Capitol and Saturn, to provide transatlantic passenger charter services.[1] American Flyers, Modern Air Transport, Overseas National Airways, Trans International Airlines, U. S. Overseas Airlines, World Airways, and Zantop Air Transport prosecuted applications for such authority.

In his recommended decision Examiner Ralph L. Wiser found that four supplemental air carriers, in addition to Capitol and Saturn, should be authorized to conduct transatlantic passenger charters; that American Flyers, ONA, TIA, and World should be selected to provide such service for a temporary period extending through April 18, 1969; and that the applications of Modern, USOA, and Zantop should be denied.

Exceptions to the examiner's decision and briefs to the Board have been filed,[2] and the Board has heard oral argument. Upon consideration of the record and the conten-

[1] Capitol and Saturn were issued temporary certificates authorizing transatlantic passenger charter services in Order E-20530, February 24, 1964.

[2] Capitol, Modern, ONA, Pan American, Saturn, TIA, Trans World, USOA, World, and Zantop filed exceptions and briefs. Briefs but no exceptions were filed by American Flyers and Bureau Counsel.

tions of the parties, we find that we are in agreement with the recommendations of the examiner. Accordingly, except

29620

as modified herein, we adopt as our own the findings, conclusions, and recommendations of the examiner in his decision which is attached hereto as an appendix. Since the examiner in his recommended decision dealt fully with the issues in the case, we will add only two comments.

1. Zantop contends that the examiner erred in finding that it is not fit, willing, and able to provide transatlantic charter air transportation. To the extent Zantop is arguing that it meets the statutory test of fitness, willingness, and ability set forth in section 401(d) of the Act as a prerequisite to issuance of a certificate, we think it clear that the carrier is fit, willing, and able.[3] However, the fundamental question in this case is much broader, and we are in full accord with the examiner's conclusion that four additional transatlantic charter carriers should be certificated and with his conclusion, based on a thorough comparative evaluation of the applicants, that American Flyers, ONA, TIA, and World should be selected.[4]

2. The Bureau and the intervenors have renewed their arguments that the certification of four additional supplemental carriers would unduly complicate the problem of foreign landing rights, would create difficulties in our avia-

[3] Since the examiner expressly found that Zantop is one of the strongest supplemental carriers, we do not believe that his decision, read as a whole, is to the contrary.

[4] What has been said applies equally to Modern.

tion negotiations with foreign governments, and would increase the demand for a grant of reciprocal charter authority to foreign air carriers. Similar arguments were

advanced in the *Supplemental Air Service Proceeding*, Docket 13795, were considered by the Board, and were rejected. For the reasons set forth by the Board in its decision in that case, the arguments here are similarly rejected.

We have considered the remaining contentions of the parties and their exceptions to the recommended decision and find that they should not alter the results we have reached.

Accordingly, in view of the foregoing and all the facts of record, we find:

1. That the public convenience and necessity require that certificates be issued to American Flyers, ONA, TIA, and World authorizing, for a period extending through April 18, 1969, supplemental air transportation (including inclusive tour charter authority)[5] of persons and their personal baggage between points in the 48 contiguous states of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand, subject to the terms, conditions, and limitations of the Board's

[5] In the inclusive tour phase of this proceeding (Order E-24240), the Board found that inclusive tour charter authority should be awarded to any supplemental air carrier certificated to perform transatlantic charters in this phase of the *Reopened Transatlantic Charter Investigation*.

Regulations governing transatlantic supplemental air transportation.

2. That American Flyers, ONA, TIA, and World are each citizens of the United States within the meaning of the Act, and are fit, willing, and able properly to perform the supplemental air transportation hereinabove authorized to be performed by each of them and to conform to the

provisions of the Act, and the rules, regulations, and requirements of the Board thereunder.

3. That the joint motion filed herein by TIA and World on February 1, 1966, should be denied.[6]

4. That, except to the extent otherwise indicated, all applications, motions, and requests involved in this proceeding should be denied.

An appropriate order will be entered.

MURPHY, Vice Chairman, and MINETTI, Member, concurred in the above opinion. GILLILLAND, Member, filed the attached concurrence and dissent. MURPHY, Chairman, and ADAMS, Member, did not take part in the decision.

---

[6] TIA and World filed a motion requesting the Board to strike those portions of ONA's brief referring to the number of firm contracts for transatlantic pro rata charters it stated it had for 1966 or, in the alternative, to reopen the record to receive in evidence three affidavits as rebuttal to ONA's assertions. Since our decision to authorize additional charter carriers in the transatlantic market is not predicated upon the number of confirmed pro rata transatlantic charter flights for 1966 alleged by any of the applicants, TIA's and World's motion will be denied.

GILLILLAND, Member, concurring and dissenting:

The Board has previously found that the public convenience and necessity require that Overseas National Airways be certificated for transatlantic charter services and I do not herein take issue with that finding.[1] The sole issue now before the Board concerning ONA is that of fitness and I agree that the carrier meets the statutory test.

I do not agree, however, that the public convenience and necessity require the services of three additional carriers in this market. There is no demonstrated public need for additional service, the grant of such authority will complicate relations with foreign governments, and it will contribute to an unfavorable United States balance of payments.

The Board has not made the finding of public convenience and necessity required by the Act. The standards of public need apply equally under sections 401(d)(1) and 401(d)(3). The Board's decision is primarily based on a traffic estimate that doubles existing traffic. From this it is concluded that the market will support several additional carriers. Heretofore the Board has not considered that a presumption favoring additional competition arises from traffic volume alone. Other factors such as cost of service, benefits to the public, effect upon carriers already serving the markets, and adequacy of existing service have also been weighed. Such factors have here either not been discussed or have been lightly treated.

---

[1] See dissent Order E-20530, October 8, 1963, (Appendix A).

For example, the Board finds that Capitol and Saturn will not be adversely affected in that all traffic will be newly generated. The fact of the matter is that 100 percent of the traffic of Capitol and Saturn will be exposed to diversion, although they are only marginal operators at the present time. The Board has not found the existing service to be inadequate, but merely that there is a lack of aggressive exploitation, and that jet capability is insufficient. A finding of inadequate service cannot be made in a market which is saturated with the competitive services of 19 certificated carriers providing charter services, group fares, and various low-cost excursion fares. Furthermore, the record shows that all the existing carriers, including Capitol and Saturn, are presently adding jet aircraft to the charter market.

There are several markets in which, over the past ten years, traffic has more than doubled. For example, this has occurred in the New York-Los Angeles and New York-San Francisco markets. It would be surprising indeed if, for no other reason, it were now to be found that the number of carriers in such markets should also be doubled. I can perceive no distinction in principle between such cases and this one.

The prime purpose of Congress in enacting Public Law 87-528 was to bring stability and balance to the supplemental carrier industry through the certification process. The Board stated in the *Transatlantic Charter Investigation* (Order E-20530, October 8, 1963) that "the number of applicants to be authorized herein should be sufficiently restricted so as to afford the carriers selected the greatest

(29625)

possible opportunity to conduct profitable operations consistent with the needs of the traveling public for transatlantic charter services." This finding should not now be reversed. Capitol, Saturn, and QNA should be given a reasonable opportunity to develop the transatlantic charter market.

/s/ WHITNEY GILLILLAND

29627

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 5th day of April, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC
CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal

(29627, 29628)

of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That the joint motion of Trans International Airlines and World Airways filed herein on February 1, 1966, be and it hereby is denied.

4. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied.

29628

5. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

September 27, 1966

29629

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

(29629, 29630)

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed

29630

transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24242.

(29631)

29631

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

OVERSEAS NATIONAL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words

(29631, 29632)

"supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board

29632

finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

(29632)

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24242.

29633

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words

(29633, 29634)

"supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board

29634

finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24242.

(29635)

29635

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA.

CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words

"supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board

finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the

(29636)

United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate
to the holder approved by the
President of the United States
on September 27, 1966
in Order E-24242.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 510-11—September Term, 1966.

(Argued June 15, 1967 Decided July 20, 1967.)

Docket Nos. 30947-30948

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,

Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

WORLD AIRWAYS, INC., *et al.*,

Intervenors.

Before:

HAYS and FEINBERG, *Circuit Judges,*
and MCLEAN, *District Judge.**

Petition to review orders of the Civil Aeronautics Board awarding certain supplemental air carriers certificates which authorize them, *inter alia,* to operate so-called "inclusive tours" between points in the United States and various foreign points.

Orders set aside to the extent that they authorize "inclusive tours." Case remanded for further proceedings not inconsistent with this opinion.

* Of the Southern District of New York, sitting by designation.

EDWARD R. NEAHER, New York, New York (Carl S. Rowe, Gertrude S. Rosenthal and Chadbourne, Parke, Whiteside & Wolff, on the brief), *for Petitioners.*

WARREN L. SHARFMAN, Associate General Counsel, Litigation and Legislation, Civil Aeronautics Board (Donald F. Turner, Assistant Attorney General, Joseph B. Goldman, General Counsel, Civil Aeronautics Board, O. D. Ozment, Deputy General Counsel, Civil Aeronautics Board, Robert L. Toomey, Attorney, Civil Aeronautics Board and Howard E. Shapiro, Attorney, Department of Justice, on the brief), *for Respondent.*

CHARLES A. HOBBS, Washington, D. C. (Glen A. Wilkinson, Paul S. Quinn and Wilkinson, Cragun & Barker, on the brief), *for Intervenor American Society of Travel Agents, Inc.*

CLAYTON L. BURWELL, Washington, D. C., Counsel for Trans International Airlines, Inc., and RAYMOND J. RASENBERGER, Washington, D. C., Counsel for Purdue Aeronautics Corp., and World Airways Inc. (Stephen D. Potts, Washington, D. C., Counsel for American Flyers Airlines, Inc., George Berkowitz, New York, New York, Counsel for Capitol Airways, Inc., and Leonard N. Bebchick, Washington, D. C., Counsel for Saturn Airways, Inc., on the brief), *for the Intervenor Supplemental Air Carriers.*

HAYS, *Circuit Judge*:

This is a petition to review five orders of the Civil Aeronautics Board awarding certain supplemental air carriers, intervenors in this action, certificates which authorize them to operate so-called "inclusive tours"[1] between points in the United States and various foreign points. Petitioners' principal contention is that the Board lacked the power to authorize inclusive tours. The jurisdiction of this court is invoked under Section 1006 of the Federal Aviation Act of 1958, 49 U. S. C. §1486. We hold that the Board lacked the power to authorize "inclusive tours" and that the challenged provisions should be stricken from the certificates awarded to the intervening carriers.

I.

Petitioners are three air carriers holding certificates of public convenience and necessity issued by the Civil Aeronautics Board under Section 401(d)(1) of the Federal Aviation Act, 49 U. S. C. §1371(d)(1), authorizing them to engage in air transportation between the United States and various points abroad. Each of the intervenors, with the exception of the American Society of Travel Agents, Inc., is a supplemental air carrier[2] defined under Section 101(32)

1 The term "inclusive tour" is, generally speaking, synonymous with the more familiar "all expense" or "package" tour. Such a tour includes various land arrangements, for example, hotel accommodations, meals and sightseeing, as well as air transportation. "Inclusive tour charters" are arrangements by which the air carrier charters a plane to a "tour operator" or travel agent who sells the entire package to the public for a single price per person. In this opinion we adopt this terminology which was used by the Board although not by the hearing examiner.

2 At earlier stages of their development these carriers were known variously as "non-scheduled" or "large irregular" air carriers. Their history has been marked by frequent controversy and litigation. See, e.g., *Great Lakes Airlines, Inc.* v. *Civil Aeronautics Board*, 294 F. 2d 217, 221, n. 6 and cases there cited (D. C. Cir.), *cert. denied*, 366 U. S. 965 (1961).

of the Act, 49 U. S. C. §1301(32), as "an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation." As the name implies, the services of supplemental air carriers are intended to supplement those of the scheduled carriers. See Section 101(33) of the Act, 49 U. S. C. §1301(33).

In July 1962, Congress enacted Public Law 87-528, 76 Stat. 143, amending the Federal Aviation Act of 1958. The amendment established a comprehensive system for the certification and regulation of supplemental air carriers. In particular, it empowered the Civil Aeronautics Board to grant certificates of public convenience and necessity authorizing these carriers to engage in "supplemental air transportation." Section 401(d)(3), 49 U. S. C. §1371(d)(3).[3] "Supplemental air transportation" was defined as "charter trips in air transportation . . . to supplement the scheduled service" which regular route carriers such as petitioners are authorized to provide. Section 101(33), 49 U. S. C. §1301(33).

On March 11, 1966 the Board handed down opinions and orders in proceedings known as the *Supplemental Air Ser-*

---

3 §1371. *Certificate of public convenience and necessity*

(d) *Issuance*

* * * * *

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this chapter.

vice Proceeding and the *Reopened Transatlantic Charter Investigation.*

One of the orders, issued in the *Supplemental Air Service Proceeding,* Docket No. 13795, approved the certification of certain supplemental air carriers in the domestic area and authorized them to operate inclusive tour charters. CAB Order No. E-23350 (March 11, 1966). Other orders issued under the same name and docket number, (1) approved the certification of certain supplemental carriers to operate in various overseas and foreign areas[4] and authorized them to operate inclusive tours (CAB Order No. E-24237 (March 11, 1966)), and (2) adopted proposed regulations defining various terms and setting out the scope of the carriers' inclusive tour authorization (CAB Order No. E-24238 (March 11, 1966)).

Two other orders were issued the same day under the title *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase), Docket No. 11908. Under the first of these orders, the right to operate inclusive tours was

---

4 Section 101(21) of the Act, 49 U. S. C. §1301(21) provides:

"Interstate air transportation," "overseas air transportation," and "foreign air transportation," respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

added to the certificates previously granted to Capitol Airways and Saturn Airways authorizing them to engage in supplemental air transportation in the transatlantic area. CAB Order No. E-24240 (March 11, 1966). The second order adopted for the authorized transatlantic supplemental carriers the regulations referred to above. CAB Order No. E-24241 (March 11, 1966).

Under the statute the orders concerned with foreign air transportation entered in the *Reopened Transatlantic* and *Supplemental Air Service* cases were subject to the President's approval. See Section 801 of the Act, 49 U. S. C. §1461.[5] Those are the orders now before us for review. No presidential approval was required for the domestic orders entered in the *Supplemental Air Service Proceeding*. They immediately became final and subject to judicial review. The petitioners in the instant case were among the parties who sought judicial review of the Board's domestic orders in the Court of Appeals for the District of Columbia Circuit, contending primarily that the Board exceeded its statutory powers in granting supplemental carriers inclusive tour authority. That court had previously decided the "split charter"[6] case, *American Airlines, Inc.* v. *Civil Aero-*

---

5 §1461. *The President of the United States*

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

6 A split charter "is simply the process of chartering one half of an aircraft to each of two unrelated charter groups." *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354 (D. C. Cir. 1965).

nautics Board, 348 F. 2d 349 (D. C. Cir. 1965), in which it had said:

> "Congress intended, although not without limits, that the Board should be free to evolve a definition [of 'charter trips,' 49 U. S. C. §§1301(33)] in relation to such variable factors as changing needs and changing aircraft . . . ." 348 F. 2d at 354.

Relying in part on the quoted statement and in part on its own analysis of the relevant legislative history, the court rejected the contention that Congress had not empowered the Board to authorize inclusive tours. *American Airlines* v. *Civil Aeronautics Board,* 365 F. 2d 939 (D. C. Cir. 1966).

Thereafter, on September 27, 1966, the orders concerning foreign air transportation were approved by the President. Petitioners now seek review of the orders in this court contending that the Board exceeded its statutory powers in granting inclusive tour authority to supplemental air carriers. They also urge that the Board erred in denying them a hearing before it granted inclusive tour authority to the supplemental carriers involved in the *Reopened Transatlantic Charter Investigation* and that the orders are unlawful under the statute since they were approved by only two members of the five man Board, one member dissenting and two not participating.

In view of our decision that the grant of authority for inclusive tours was beyond the Board's power, we find it unnecessary to reach the other points raised by petitioners.

The Board contests petitioners' claims on the merits. It also argues that its power with respect to the orders in question was conclusively determined in the prior action involving these petitioners, *American Airlines* v. *Civil Aeronautics Board, supra,* 365 F. 2d 939, and that the doctrine of *res judicata* precludes relitigation of this issue.

II.

The Board has moved that the appeal be dismissed or transferred to the Court of Appeals for the District of Columbia Circuit. It is conceded that our court has jurisdiction of the petition and that venue is proper under Section 1006 of the Act, 49 U. S. C. §1486. However, the Board argues that petitioners are guilty of forum-shopping, seeking a determination from this court contrary to that reached by the District of Columbia Circuit, thus enhancing their opportunity for review in the Supreme Court of the legal issues here tendered. We are urged to transfer the appeal, either under the provisions of 28 U. S. C. §2112,[7] or in the exercise of our inherent discretionary power.

Section 2112 authorizes transfer only where "proceedings have been instituted in two or more courts of appeals with respect to the same order." It is clear that the orders before us are not the same as those reviewed by the Court of Appeals for the District of Columbia Circuit. See *Far East Conference* v. *Federal Maritime Comm'n*, 337 F. 2d

---

7 §2112. Record on review and enforcement of agency orders.

(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record . . . . If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

146, 148 n. 1 (D. C. Cir. 1964), cert. denied, 379 U. S. 991 (1965).

Even assuming that this court has inherent discretionary power to transfer a case to another court of appeals in the interests of orderly judicial administration (but see *Gulf Oil Corp.* v. *Federal Power Comm'n*, 330 F. 2d 824 (5th Cir. 1964)), we find nothing in the decided cases that would justify us in transferring this case to the District of Columbia Circuit. We have jurisdiction of the action and, since petitioners' principal place of business is in the Second Circuit, venue is properly laid. Cf. *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 343 F. 2d 905 (8th Cir. 1965); *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 337 F. 2d 249 (10th Cir. 1964). Reaching the merits in this case will not require us to construe a prior order of another circuit (cf. *Pacific Gas & Electric Co.* v. *Federal Power Comm'n*, 272 F. 2d 510 (D. C. Cir. 1958) (accepting transfer from 9th Circuit)) and we are not presented with the very unusual circumstances thought by the court to justify transfer in *Eastern Air Lines* v. *Civil Aeronautics Board*, 354 F. 2d 507 (D. C. Cir. 1965).

In the absence of any showing of inconvenience to respondent, we are not convinced that there are any interests of sound judicial administration which suggest that this case should be transferred. We can perceive no reason for treating this case as an exception to the principle affording a litigant wide latitude in his selection of a forum where Congress has given him a choice.

III.

The Board's motion to dismiss is based on its contention that the doctrine of *Chicago & S. Air Lines* v. *Waterman S. S. Co.*, 333 U. S. 103 (1948), precludes review of the Board's challenged orders and that, in any event, prin-

ciples of *res judicata* prevent petitioners from relitigating the issues. We hold that neither the *Waterman* doctrine nor principles of *res judicata* bar us from deciding the merits of petitioners' claim.

In the *Waterman* case petitioner sought to invalidate a Board order awarding route authority for overseas and foreign air transportation. In accordance with Section 801 of the statute, 49 U. S. C. §1461 (reprinted in footnote 5 *supra*), the order had been submitted to the President and had been approved by him. Petitioner did not challenge the regularity of the Board's proceedings and apparently raised no issue as to the Board's statutory authority; instead it attacked the correctness of the Board's findings and the adequacy of the evidence supporting them. The Supreme Court held that:

> "[O]rders of the Board as to certificates for overseas or foreign air transportation are not mature and are therefore not susceptible of judicial review at any time before they are finalized by Presidential approval. After such approval has been given, the final orders embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate." 333 U. S. at 114.

We need not decide whether, as has been argued, the *Waterman* decision rests on a misinterpretation of Section 1006 of the Act, 49 U. S. C. §1486 providing for judicial review of the Board's orders. See Miller, the *Waterman* Doctrine Revisited, 54 Geo. L. J. 5, 6-9 (1965). We agree with the Court of Appeals for the District of Columbia Circuit that the *Waterman* case does not "govern a situation where the action of the Board, before the matter reaches the President, is beyond the Board's power to act."

American Airlines v. *Civil Aeronautics Board, supra,* 348 F. 2d at 352. As the court there stated:

> "Clearly, *Waterman* presupposes lawfully exercised congressional authority in the Board's action, in the first instance, as an indispensable predicate, without which there is nothing Presidential action can approve." *Ibid.; cf. id.* at 354-55 (concurring opinion); see generally, Miller, *op. cit. supra.*

Waterman, therefore, presents no obstacle to the attack on the Board's orders in this case.

We also reject the Board's contention that the doctrine of *res judicata* bars further litigation of the issues now before us.

The principles to be applied were summarized by the Supreme Court in *Commissioner* v. *Sunnen,* 333 U. S. 591 (1948):

> "[I]f the very same facts and no others are involved in the second case . . . the prior judgment will be conclusive as to the same legal issues which appear, assuming no intervening doctrinal change. But if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case." 333 U. S. at 601 (footnote omitted); see *Consolidated Edison Co.* v. *United States,* 279 F. 2d 152, 154 (2d Cir. 1960), aff'd 366 U. S. 380 (1961); cf. *Federal Power Comm'n* v. *Amerada Petroleum Corp.,* 379 U. S. 687, 690 (1965); *United States* v. *Stone & Downer Co.,* 274 U. S. 225 (1927); *Grandview Dairy* v. *Jones,* 157 F. 2d 5, 9, 10 (2d Cir.), cert. denied, 329 U. S. 787 (1946); see generally Developments in the Law—*Res Judicata,* 65 Harv. L. Rev. 818, 843-44 (1952).

More recently, in *Yates* v. *United States*, 354 U. S. 298 (1957), the Court said that the

> "doctrine makes conclusive in subsequent proceedings only determinations of fact, and mixed fact and law, that were essential to the decision. *Commissioner* v. *Sunnen*, 333 U. S. 591, 601-602; *Tait* v. *Western Maryland R. Co.*, 289 U. S. 620 [1933]; *The Evergreens* v. *Nunan*, 141 F. 2d 927, 928 [(2d Cir.), cert. denied, 323 U. S. 720 (1944)]." 354 U. S. at 336; See Restatement, Judgments §70, comment e.

The operative facts in this case, involving overseas and international air transportation, are different from those before the District of Columbia Circuit in the domestic charter case. Separate exhibits relating to each area were admitted in the proceedings before the Board. In their opinions the Board and examiner considered each area separately, noting, for example, the different amounts of charter traffic involved and the different consequences, in terms of potential diversion of passengers from the regularly scheduled carriers, that inclusive tours would have in each market. The orders here challenged became final at a different time and are clearly distinguishable from those involved in the domestic charter litigation.

None of the cases cited by the Board supports the conclusion that principles of *res judicata* preclude litigation of the question of law here involved. For example, the "order" challenged in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 257 F. 2d 926 (3d Cir. 1958) was merely a phase of the order which had been previously upheld by this court in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 247 F. 2d 646 (2d Cir. 1957), cert. denied, 355 U. S. 912 (1958). Petitioner was thus properly precluded from relitigating the issue. *Bartsch* v. *Wash-*

ington Metropolitan Area Transit Comm'n, 357 F. 2d 923 (4th Cir. 1966) is distinguishable on similar grounds.

This court has said that "the law of collateral estoppel is 'growing law.'" *United States* v. *Russell Mfg. Co.,* 349 F. 2d 13, 18-19 (2d Cir. 1965); see also *B. R. DeWitt, Inc.* v. *Hall,* 19 N. Y. 2d 141, 278 N. Y. S. 2d 596 (1967). Nevertheless judicial aversion to forum shopping is not a sufficient ground for precluding litigation of a question of law by extending the doctrine of *res judicata* into areas traditionally governed by "the ordinary rule of stare decisis." *Commissioner* v. *Sunnen, supra,* 333 U. S. at 601; cf. *Island Airlines, Inc.* v. *Civil Aeronautics Board,* 363 F. 2d 120, 123 (9th Cir. 1966). We therefore consider ourselves free "to make an independent examination of the legal matters at issue." *Commissioner* v. *Sunnen, supra,* 333 U. S. at 601.

IV.

The question before us is whether the Board's statutory authority to issue certificates of public convenience and necessity for "supplemental air transportation," defined as "charter trips in air transportation," (Section 101(33) of the Act, 49 U. S. C. §1301(33)) includes the power to authorize inclusive tour charters.[8] Consideration of the legislative history of the Act leads us to the conclusion that the term "charter trips" was not intended to embrace the inclusive tour charters authorized by the Board's orders.

The provisions in question were added to the Federal Aviation Act by Public Law 87-528. As we have pointed

8 The question presented is not whether Congress withdrew from the Board a pre-existing power to grant inclusive tour authority. "[P]rior to 1962 the Board had never authorized inclusive tour authority for the supplementals." *American Airlines* v. *Civil Aeronautics Board, supra,* 365 F. 2d at 946. See also Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 111 (1961).

out this amendatory legislation established a comprehensive system for the certification and regulation of supplemental air carriers. Its principal purposes were to clarify the permissible field of operations of the supplemental carriers,[9] to assure their economic viability, to eliminate marginal and unsafe operators and "to maintain the regulatory scheme of the Federal Aviation Act and the protection of the certificated carriers such as petitioners by eliminating unregulated individually ticketed point-to-point competition from the supplementals." *American Airlines, Inc.* v. *Civil Aeronautics Board, supra,* 365 F. 2d at 944-45; see authorities cited *id.*, at n. 8.

The bill which evolved into Public Law 87-528 was prepared by the Board and introduced in both houses of Congress early in the 87th Congress. See S. 1969, 87th Cong., 1st Sess. (1961); H. R. 7318, 87th Cong., 1st Sess. (1961). Also introduced in the House was a bill proposed by the supplemental air carriers, H. R. 7512, 87th Cong., 1st Sess. (1961).

The definition of "supplemental air transportation" found in the Board's bill[10] would have permitted the Board

---

9 The statute was in part a response to the decisions in *United Air Lines* v. *Civil Aeronautics Board,* 278 F. 2d 446 (D. C. Cir.), vacated, 364 U. S. 297 (1960) and *American Airlines* v. *Civil Aeronautics Board,* 235 F. 2d 845 (D. C. Cir. 1956), cert. denied, 353 U. S. 905 (1957), which the Board thought had placed in doubt the statutory basis for the continued operation of supplemental carriers under existing law. See Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 5, 281-83 (1961); Hearings Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess. 10, 13, 29 (1961).

10 The Board's bill provided:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity

to certify supplemental air carriers to perform a broad range of services including not only existing charter services but also the limited individually ticketed transportation for the general public that was then permitted under temporary legislation passed by Congress. See Public Law 86-661, 74 Stat. 527 (1960); H. R. 7318, Section 2, 87th Cong., 1st Sess. (1961); see also Public Law 87-528, Section 7, reprinted after 49 USC §1371. The definition contained in the bill proposed by the supplemental carriers went even further. It would have authorized "unlimited charter operations on a planeload basis for the carriage of passengers and property . . . with the word 'charter' herein being defined as air transportation performed pursuant to an agreement for the use of the entire capacity of an aircraft . . . ." H. R. 7512, 87th Cong., 1st Sess. (1961). It also would have permitted "individually ticketed passenger . . . operations . . . in interstate, overseas and territorial air transportation." *Ibid.*

Hearings at which representatives of the Board, the scheduled aircarriers and the supplementals all testified were held in June, 1961, before the Aviation Subcommittee of the Senate Committee on Commerce and before a Subcommittee of the House Committee on Interstate and Foreign Commerce. At the hearings the Board made clear its opposition to any arrangement that would permit travel agents to solicit the general public in forming charter groups. See, e.g., Senate Hearings, *supra* n. 9, at 29.

Following the hearings each committee reported out its own bill. Under the Senate Bill the Board was expressly

---

which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

empowered to authorize supplemental carriers to operate inclusive tours.[11] With the express exception of the "all expense-paid tour," the Senate bill was intended to prevent the Board from authorizing "individually ticketed service whether offered by an air carrier directly or by a travel agent." S. Rep. No. 688, 87th Cong., 1st Sess. 13-14 (1961). However it did not, as the Board contends, require that supplementals be certificated to operate inclusive tours. Its language was merely permissive, authorizing the Board to grant such authority when required by the public need and consistent with the capability and interests of the particular carrier. "[T]he bill does not require the Board to grant every supplemental carrier any particular charter authority." See S. Rep. No. 688, 87th Cong., 1st Sess. 12-13 (1961).

The bill passed the Senate on August 28, 1961.

The bill reported out by the House Committee, like the Senate bill, worked substantial changes in the legislation drafted by the Board. However, unlike the Senate bill, the House version did not define the term charter although that term is found in the bill's definition of supplemental air transportation.[12] The definition of "supplemental air

---

11 The bill defined "charter service" to mean:

"air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour."

12 "(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity

transportation" included in the House bill was ultimately enacted by Congress as part of Public Law 87-528. See 49 U. S. C. §1301(33).

Of particular importance in deciding what was the intended scope of the Board's powers under this bill which was passed by the House on September 18, 1961, is the statement of the House Committee that its bill "would give the Board some, but not all, of the authority requested by it. The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate supplemental carriers, especially, in the field of individually ticketed operations." H. R. Rep. No. 1177, 87th Cong., 1st Sess. 6-7 (1961).

In deciding whether grant of inclusive tour authority violates the limitations of the statute it must be remembered "that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel." *American Airlines* v. *Civil Aeronautics Board, supra,* 348 F. 2d at 354. See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1967).

It is clear that the fact that the Board has the power to define "charter" to include split charters (see *American Airlines* v. *Civil Aerondutics Board, supra,* 348 F. 2d 349), a device permitting the Masons and Elks each to charter one half of the capacity of an aircraft, does not mean that the Board is free to adopt a definition that contravenes basic policies laid down in the Act. To permit the selling of individual tickets to the general public in direct competition with the regularly scheduled airlines, regardless of whether such selling is done through the medium of a

---

issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

travel agent who has first "chartered" the plane, does violate basic policies of the Act. Any lingering ambiguities clouding this issue are dispelled by the subsequent history of the House and Senate bills, to which we now turn.

The conflicting House and Senate bills were submitted to a Conference Committee which reported out a substitute bill that was ultimately enacted as Public Law 87-528. The substitute followed the House version, eliminating the definition of the term "charter" found in the Senate bill. It is clear from the conference report that one purpose of the Committee in adopting the provisions of the House bill was to prohibit "individually ticketed and waybilled services on a permanent basis."[13] See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1962).

Even more direct and more persuasive evidence is available concerning the intention of the conferees in striking from the bill the provision that would have permitted all expense package tours. Several of the bill's floor managers addressed themselves to this subject during the debate on

---

13 The statute as enacted permits only two exceptions to the general rule forbidding supplemental carriers to provide individually ticketed services. The first exception, Section 9 of Public Law 87-528 provided a two year period, now expired, during which the Board could authorize such services in order "to permit an orderly transition to an all-charter operation." Reprinted following 49 U. S. C. §1371; See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 7, 14 (1962). The second authorizes the Board to issue a "special operating authorization" for a period of 30 days subject to renewal for a maximum of 60 additional days. Such authorization, enabling a supplemental carrier to engage in individually ticketed operations, could be issued only on a showing that "the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service," or that there is a temporary requirement for such service between two points not regularly served by a scheduled carrier. Section 417 of the Act, 49 U. S. C. §1387; see Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 4 (1962); H. R. Rep. No. 1177, 87th Cong., 1st Sess. 2, 12-13 (1961).

the bill in their respective houses. They were unanimous in declaring that the "all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in [the House's] position on that." 108 Cong. Rec. 12322 (June 29, 1962) (remarks of Rep. Williams); see remarks of Rep. Walter, *ibid.* Their statements as to this limitation on the Board's authority went unchallenged.

For example, Senator Scott stated:

> "The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' Such a group could have been assembled from the general public . . . .
>
> The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air transportation. There should be no question about that. The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation." 108 Cong. Rec. 12284-85 (June 29, 1962).

Senator Thurmond stated:

> "I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision." 108 Cong. Rec. 12285 (June 29, 1962).

In the House, Representative Harris, Chairman of the House Interstate Commerce Committee, made clear that

while "the Senate proposed to change the well established meaning of 'charter,'" the House objected to the change.

> "A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for a particular purpose by a single engaging party. Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language. As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter." 108 Cong. Rec. 12322 (June 29, 1962).

He went on to read a statement, identical to one submitted later by Representative Collier:

> "The bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such

subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the bill, as passed by the House, contained no definition of charter.

The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter of 'a group on an all-expense paid tour.' The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy." 108 Cong. Rec. 12322 (June 29, 1962); see *id.* at 12324 (remarks of Rep. Collier).

Senator Cotton said:

"The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on charter flights to individual members of the general public who were on all-expense-paid tours. I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board." 108 Cong. Rec. 12284 (June 29, 1962).

These statements are specific in rejecting the notion that the term charter can be construed to include all expense tours. We therefore reject the argument that the legislators' concern was with abuses growing out of the Board's

prior practice of allowing supplemental carriers to perform limited scheduled individually ticketed travel. Regardless of the extent to which there may have been legislative concern based on this prior experience, indeed whether or not the expression of concern was misguided or wholly unwarranted, it was in fact manifested in a congressional declaration binding on both the Board and this court, that was clearly intended to forbid the Board to authorize inclusive tours.

The Board also argues that many of the statements made on the floor of Congress were directed against split charters as well and that the Board's power to authorize such charters has nevertheless been upheld. See *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d 349. While we have no occasion to pass on the question of the propriety of split charters we note that Congressional concern with their potential impact is much less clear from the Committee reports and hearings than is the intention to prohibit individually ticketed operations in whatever guise, by supplemental carriers. Moreover, the legislative history involved in the inclusive tour question, with one house passing legislation that would have specifically empowered the Board to authorize package tours only to have the provision deleted by the Conference Committee with the floor managers unanimous in their explanations of the change, is not repeated in the case of split charters. See, e.g., 108 Cong. Rec. 12283 (June 29, 1962) (remarks of Sen. Monroney). On the contrary, the provision deleted from the Senate bill would in fact have forbidden split charters. See Section 101(13) of the bill, S. Rep. No. 688, 87th Cong., 1st Sess. 13, 22 (1961) (reprinted n. 11 *supra*).

But the Board urges that in construing the statute we should not give any weight to statements made in floor

debate. In determining whether it had the power to authorize inclusive tours, the Board, finding the statute and committee reports clear, declared that there was "no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers." Board Order E-23350 (March 11, 1966).

We do not agree. That Congress adopted the House version of the bill, specifically rejecting the Senate's conflicting version, is of course an extremely significant factor in determing what was Congress' intention with respect to the matters in issue. See, e.g., *First Nat'l Bank* v. *Walker Bank*, 385 U. S. 252, 258 (1966). It would be foolish, indeed, to disregard the one source of legislative history that explains the reasons for the conference committee's action.

Nor are we here concerned with general remarks made in debate which contradict either the face of the statute or statements in committee reports. On the contrary, we have before us on the one hand a statute that is not clear on its face and committee reports that seem to support petitioners' view although they can perhaps be deemed ambiguous. On the other hand we have statements made by the floor managers that fully explain the changes in the bill. These floor managers were members of the legislative committees that held extensive hearings and were responsible for formulating the legislation.[14]

Only recently, in circumstances similar to those in the instant case, a unanimous Supreme Court relied on statements made in debate, not only by a sponsor of legislation and by a member of the Conference Committee but also by

14 For example, Representative Harris was the Chairman of the House Committe on Interstate and Foreign Commerce, Representative Williams was Chairman of the Subcommittee on Transportation and Aeronautics of which Representative Collier was a member, Senator Monroney was chairman of the Subcommittee on Aviation, Senators Thurmond, Cotton, Morton and Scott were on that committee.

other members of Congress, and regarded such statements as authoritative indicators of congressional intent. *First Nat'l Bank* v. *Walker Bank, supra,* 385 U. S. at 258-60; see also *Brown Shoe Co.* v. *United States,* 370 U. S. 294, 311-23 (1962).

The authorities cited by the Board do not support the view that we may disregard or give little or no weight to statements made on the floor of Congress under the circumstances of this case. In *United States* v. *International United Automobile Workers (UAW-CIO),* 352 U. S. 567 (1957) although the Court did say that debate is not entitled to the same weight "as carefully considered committee reports," it still examined the debate, finding that it confirmed what was contained in the reports. 352 U. S. at 586-87 & n. 1. *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, 474-75 (1921) exhibits a similar treatment of Congressional debate. *Nicholas* v. *Denver & Rio Grande W. R. R.,* 195 F. 2d 428, 431-32 (10th Cir. 1952), whatever dictum the opinion may contain to the contrary, fully supports the position that we take here.

If, as we hold, Congress did not give the Board power to authorize inclusive tours it is immaterial whether, as the Board contends, the proposed regulations will be effective in curbing abuses of the inclusive tour certificates.

Since the Motor Carrier Act is quite different from the Federal Aviation Act in language, statutory structure and legislative history, the fact that all expense tours have been approved under the Motor Carrier Act (see *National Bus Traffic Ass'n* v. *United States,* 143 F. Supp. 689 (D. N. J. 1956), aff'd *per curiam,* 352 U. S. 1020 (1957)), is not at all persuasive in construing Public Law 87-528, even if we assume that the tours there authorized are similar to those approved by the Board in this case, an assumption that petitioners vigorously contest.

We hold that the certificates before us awarding inclusive tour authority to supplemental air carriers in foreign and overseas transportation are invalid.

Since our conclusion that the Board acted in excess of its statutory powers is dispositive of the case, we need not pass on the other points raised by petitioners.

The orders are set aside and the case remanded to the Board for further proceedings not inconsistent with this opinion.

Judgment

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentieth day of July, one thousand nine hundred and sixty-seven.

Present:

HON. PAUL R. HAYS,
HON. WILFRED FEINBERG,
Circuit Judges,

HON. EDWARD C. McLEAN,
District Judge.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,

Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., PURDUE AERONAUTICS CORP. (Purdue), AMERICAN FLYERS AIRLINE CORP.,

Intervenors.

Judgment

A petition for review of orders of the Civil Aeronautics Board together with a motion by the respondent to dismiss the petition for lack of jurisdiction or in the alternative to transfer the action to the United States Court of Appeals for the District of Columbia.

This cause came on to be heard on a transcript of record certified by the Civil Aeronautics Board and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that said orders be and they hereby are set aside and that the action be and it hereby is remanded for further proceedings not inconsistent with the opinion of this court, with costs to the petitioners.

Further ordered, adjudged and decreed that said motion be and it hereby is denied.

A. DANIEL FUSARO
Clerk

A true copy.

A. DANIEL FUSARO
Clerk

(Seal)

Order on Rehearing

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of September, one thousand nine hundred and sixty-seven.

Present:

HON. PAUL R. HAYS,
HON. WILFRED FEINBERG,
Circuit Judges,

HON. EDWARD C. McLEAN,
District Judge.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,

Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., CAPITOL AIRWAYS, INC., PURDUE AERONAUTICS CORPORATION (Purdue), AMERICAN FLYERS AIRLINE CORPORATION,

Intervenors.

(and another case)

Order on Rehearing

A petition for a rehearing having been filed herein by counsel for the respondent,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO
Clerk

Order Denying Petition for Rehearing En Banc

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of September, one thousand nine hundred and sixty-seven.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,

HON. STERRY R. WATERMAN,
HON. LEONARD P. MOORE,
HON. J. JOSEPH SMITH,
HON. IRVING R. KAUFMAN,
HON. PAUL R. HAYS,
HON. ROBERT P. ANDERSON,
HON. WILFRED FEINBERG,
Circuit Judges.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,
Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,
Respondent,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., CAPITOL AIRWAYS, INC., PURDUE AERONAUTICS CORPORATION (PURDUE), AMERICAN FLYERS AIRLINE CORPORATION,
Intervenors.

(and another case)

Order Denying Petition for Rehearing En Banc

Petitions for rehearing containing suggestions that the action be reheard in banc having been filed herein by counsel for the respondent and intervenors, Trans International Airlines Corp., World Airways Inc., Purdue Aeronautics Corp., Capitol Airways Inc., and the American Society of Travel Agents, Inc.,

Upon consideration thereof, it is

Ordered that said petitions be and they hereby are denied.

A. DANIEL FUSARO
Clerk

Order Granting Stay of Issuance of Mandate Under Rule 28(c)

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 13th day of October, 1967

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,
Petitioners,

—v.—

CIVIL AERONAUTICS BOARD,
Respondent,

WORLD AIRWAYS, INC., *et al.*,
Intervenors.

Motions having been made herein on behalf of the Civil Aeronautics Board and the Intervenors to stay issuance of the mandate pending a petition for a writ of certiorari to the Supreme Court of the United States,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted and that the issuance of the mandate be and it hereby is stayed pursuant to and subject to the provisions of Rule 28(c) of the rules of this court.

PAUL R. HAYS
U.S.C.J.

WILFRED FEINBERG
U.S.C.J.

SUPREME COURT, U. S. No. 800

Office-Supreme Court, U.S.
FILED
NOV 7 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., SATURN AIRWAYS, INC., PURDUE AERONAUTICS CORPORATION, CAPITOL INTERNATIONAL AIRWAYS, INC., and AMERICAN FLYERS, INC.,

Petitioners,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., and AMERICAN AIRLINES, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RAYMOND J. RASENBERGER
Lear, Scoutt & Rasenberger
Washington, D. C.

CLAYTON L. BURWELL
Burwell, Sherman & Hansen
Washington, D. C.

LEONARD N. BEBCHICK
Bebchick & Sher
Washington, D. C.

GEORGE BERKOWITZ
New York, New York

STEPHEN D. POTTS
Shaw, Pittman, Potts,
Trowbridge & Madden
Washington, D. C.

Counsel for Petitioners

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of Case	2
Reasons for Granting the Writ	7
Conclusion	14
Appendix A	
Opinion of the Second Circuit	1A
Appendix B	
Opinion of the District of Columbia Circuit	26A
Appendix C	
Statutes Involved	45A
Appendix D	
Judgment	47A

CITATIONS

Cases:

American Air Lines, Inc. v. *Civil Aeronautics Board*, 365 F.2d 939	6, 7
American Air Lines, Inc. v. *Civil Aeronautics Board*, 348 F.2d 349	8
C & S Airlines v. *Waterman SS Corp.*, 333 U.S. 103	2
Caledonian Airways (Prestwick) Ltd., C.A.B. Order E-25017, April 21, 1967	13
Duplex Printing Press Co. v. *Deering*, 254 U.S. 443	10

	Page
National Bus Traffic Assn. v. *United States*, 143 F. Supp. 689	8
Nicholas v. *Denver & R.G.W.R. Co.*, 195 F.2d 428	10
Reopened Transatlantic Charter Investigation, CAB Order E-24240-1, September 30, 1966	4, 5, 6
Sudflug Suddeutsche Fluggesellshaft, CAB Order E-24697, January 31, 1967	13
Supplemental Air Service Proceeding, CAB Order E-23350, March 11, 1966, Orders E-24240-2, September 30, 1966	4, 5, 6
Transatlantic Charter Investigation, CAB Orders E-20530-1, March 3, 1964	4
United Air Lines v. *Civil Aeronautics Board*, 278 F.2d 446	3
United States v. *International Union United Auto, etc. Workers*, 352 U.S. 567	10
Statutes:	
Federal Aviation Act of 1958	
§ 101 (33) (49 USC 1301 (33))	2, 7
§ 801 (49 USC 1461)	5
§ 1006 (49 USC 1486)	2, 6
Public Law 87-528 (1962), Act of July 10, 1962, 76 Stat. 143	3
Committee Reports:	
S. Rept. No. 1567, 86th Cong. 2nd Sess.	3
S. Rept. No. 688, 87th Cong. 1st Sess.	3, 4
H. Rept. No. 1177, 87th Cong. 1st Sess.	3, 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. ———

WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., SATURN AIRWAYS, INC., PURDUE AERONAUTICS CORPORATION, CAPITOL INTERNATIONAL AIRWAYS, INC., and AMERICAN FLYERS, INC.,

Petitioners,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., and AMERICAN AIRLINES, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners, intervenors below, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit in the above entitled case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is not yet reported, but is printed as Appendix A to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered July 20, 1967. A timely petition for rehearing was denied on September 29, 1967. The jurisdiction of this court is invoked under Title 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Civil Aeronautics Board, in conformity with Presidential approval, may issue certificates of public convenience and necessity for overseas and foreign "supplemental air transportation" (defined by Section 101(33) of the Federal Aviation Act as "charter trips in air transportation . . . to supplement . . . scheduled service") which authorize "inclusive tour charters" as defined and limited in the orders at issue.[1]

STATUTE INVOLVED

The pertinent portions of the Federal Aviation Act of 1958 are set forth in Appendix C to this petition.

STATEMENT OF CASE

The Second Circuit and the District of Columbia Circuit have reached diametrically opposed conclusions with respect to an important question of statutory interpretation.

---

[1] Consideration of this issue of necessity invokes the threshold jurisdictional question of whether the Court below proceeded in violation of 49 U.S.C. 1486(a) as amplified by *C&S Airlines* v. *Waterman SS Corp.*, 333 U.S. 103 (1948) which precludes review of CAB Orders bearing Presidential approval. Petitioners believe that the government's consent to jurisdiction below was legally ineffective, and Petitioners intend fully to brief and argue this critical jurisdictional question which, of course, is open for determination.

The statute, PL 87-528 (1962), was the culmination of a series of proceedings by the Civil Aeronautics Board to determine the proper role for the so-called large irregular air carriers. The Board's conclusions were overturned in court,[2] and legislation was enacted.

In considering such legislation, Congress examined *de novo* the role of these carriers. It found them to be a "significant and valuable part of the nation's air transportation system."[3] It concluded, however, that the historic participation of these carriers in individually ticketed services should be terminated and that these carriers ("supplemental air carriers") should be "charter" specialists. "Supplemental air transportation" was defined as "charter trips . . .," but disagreement arose concerning whether and how to define "charter."

The Senate Committee's bill would have enacted a "common law" definition of charter with added language to the effect that services offered to individual members of the general public would not be included except in the case of "an all expense paid tour."[4] The Committee

[2] *United Air Lines* v. *CAB*, 276 F.2d 446 (D.C. Cir. 1960). A brief summary of events leading up to the legislation may be found in the report of the House Committee. H. Report 1177, 87th Cong., 1st Session (1961), pp. 7-10 (JA 1152a-1158a).

[3] S. Rept. No. 1567, 86th Cong., 2nd Sess., p. 5; H. Rept. No. 1177, 87th Cong., 1st Sess., p. 16 (JA 1135a).

[4] The Senate Committee definition was as follows:

> "'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of an all-expense-paid tour." S. 1969 as reported by Committee. S. Report No. 688, 87th Cong. 1st Sess., p. 1 (JA 1210a).

Report noted that all expense tour charters "conform to the traditional concept of charter" and represent "a very different sort of service from individually ticketed transportation." S.Report No. 688, 87th Cong., 1st Sess., pp. 13-14. (JA 1238a-1239a).

The House Committee did not adopt the Senate's approach. Rather it abandoned entirely the idea of enacting a specific definition of "charter." The Committee Report stated: "This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." H.Rept. 1177, 87th Cong., 1st Sess., p. 11 (JA 1160a).

The Conference adopted the House Committee's version of the bill without explanation. However, at the time the Conference bill came up for action on the floor of each house a number of statements were made by members connected with the bill to the effect that all expense tour charters were not intended to be authorized.

The question of Congressional intent as to all expense tour charters (now called "inclusive tour charters") arose promptly in two proceedings conducted by the Board to consider applications to engage in supplemental air transportation. The *Supplemental Air Service Proceeding* (Docket 13795) dealt with the requirements for supplemental air transportation domestically and internationally except for transatlantic service. The *Transatlantic Charter Investigation* (Docket 11908), which had been commenced prior to the legislation,[5] became the vehicle for

[5] Because of the early popularity of transatlantic charters, the Board had determined in 1960 to consider awards for such service (JA 617a) under its basic authority to issue certificates for air transportation. In its first decision in the *Transatlantic* proceeding in 1963 the Board decided on a policy against authorizing all-expense tour charters. This aspect of the decision was, however, not passed upon by the President (who approved only a portion of the awards recommended by the Board). The issue therefore remained for reconsideration by the Board in the *Reopened Transatlantic Charter Investigation.*

determining the requirements for supplemental air transportation in that part of the world. The *Reopened Transatlantic* and *Supplemental* cases were ultimately consolidated by the Board for oral argument, which was held on October 13-14, 1965.

The Board decided the *Supplemental* case on March 11, 1966. It found, as had its Hearing Examiner, that it had the power to authorize such charters and that, considering the benefit to the public and to the supplemental carriers, and the absence of adverse effect on other carriers, it should do so at least for an experimental period of 5 years. (JA 336a et seq.). Two opinions and orders were adopted, one containing domestic authority, the other covering foreign and overseas. The opinion and order covering the domestic awards (Order E-23350, JA 332a) was made public. At the same time a new regulation (Part 378, JA 411a) was issued defining "inclusive tour charter" and setting forth detailed terms and conditions under which such charters could be operated. These provisions were designed to insure that the services being authorized were *bona fide* "charter trips."

The Board's opinion and orders in the *Supplemental* case pertaining to foreign and overseas air transportation were at the same time transmitted, without public disclosure, to the President for his approval as required by the statute. (Section 801 of the Federal Aviation Act (49 U.S.C. 1461)). These documents incorporated by reference the Board's opinion on the legal issues in the domestic order. On the same day, March 11, 1966, the Board also adopted and transmitted to the President an order in the *Reopened Transatlantic* case (Order E-24240, JA 1060a) authorizing inclusive tour charters in the transatlantic market. The Board disposed of the challenge to its power to authorize such tours by referring to its opinion in the *Supplemental* case. (JA 1077a). It also adopted the same regulation for the international

inclusive tour charters—transatlantic and other—as it had issued for the domestic charters.

On September 30, 1966, the Board's orders with respect to the *Reopened Transatlantic* case and the foreign and overseas portions of the *Supplemental* case, having been approved by the President, were issued. Orders E-24240-2 (JA 1060a) and E-24237-9 (JA 543a).

Judicial review of the Board's decision in the domestic phase of the *Supplemental* case was sought by eleven scheduled air carriers in the District of Columbia Circuit in May 1966. The sole issue concerned the agency's power to authorize inclusive tour charters as "supplemental air transportation." In an opinion of July 19, 1966, the court sustained the Board's orders. *American Airlines* v. *Civil Aeronautics Board*, 365 F.2d 939. (The full opinion is reprinted as Appendix B hereto.)

In November 1966 the petitioners below—American, Pan American, and TWA—sought to have the orders of September 30, 1966, pertaining to foreign and overseas transportation, set aside by the Second Circuit.[6] These three carriers had also been petitioners in the D. C. Circuit. The principal ground for review was the same question of statutory power raised in the D. C. Circuit. The Second Circuit, in an opinion of July 20, 1967, rejected the suggestion of the Board that it should not take jurisdiction because of *res judicata*. It addressed itself to the statutory issue and reached an opposite conclusion from that of the D. C. Circuit. Rehearing was denied on September 29, 1967.

---

[6] The jurisdiction of the Circuit Court was taken under section 1006(a) of the Federal Aviation Act, 49 U.S.C. 1486(a). That section is reproduced in Appendix C hereto.

REASONS FOR GRANTING THE WRIT

1. There is a clear conflict between the decision of the court below and the District of Columbia Circuit.

The court below described the issue before it as follows:

> "The question before us is whether the Board's statutory authority to issue certificates of public convenience and necessity for 'supplemental air transportation,' defined as 'charter trips in air transportation,' (Section 101(33) of the Act, 49 U.S.C. § 1301 (33)) includes the power to authorize inclusive tour charters." Appendix A, p. 13 A. (footnote omitted)

The D. C. Circuit opinion described the issue before it as follows:

> "It is the uncertainty over the meaning of the term 'charter trips' which prompts the necessity for interpretation of the statute, particularly as to whether such term embraces 'inclusive tour charters'." *American Airlines, Inc.* v. *C.A.B.*, 365 F.2d 939, 941 (1966) (Appendix B, p. 27 A).

Thereafter the similarity between the two opinions ends. The following is a brief description of the approach taken by each reviewing court and the agency.

The Civil Aeronautics Board found, as had its Hearing Examiner, that all-expense tour charters were required by the public and that the scheduled carriers had little incentive to operate them. It also found that such charter authority would provide badly needed economic strength to the supplemental carriers and would not have a significant adverse effect on the scheduled carriers. (E.g., JA 140a-141a).

In concluding that all-expense tour charters were "charter trips" within the meaning of the statute, the Board

relied upon holdings under the Motor Carrier Act[7] and upon a recent opinion of the D. C. Circuit dealing with the same statutory provisions. *American Airlines Inc.* v. *Civil Aeronautics Board*, 348 F.2d 349 (1965) (the "split charter" case). The Board found the same conclusion indicated by the legislative history, considering both the Committee reports[8] and floor statements.[9]

The District of Columbia Circuit gave particular attention to the legislative purposes. It concluded that Congress was anxious to stabilize the supplemental carrier industry and provide a sound economic basis for its further development. The court reiterated its earlier conclusion in the "split charter" case that the term "charter trips" did not have a fixed meaning but must be read in light of the statutory objective:

> ". . . a prime concern of Congress was to maintain [the] integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." 365 F.2d at 949 (Appendix B, p. 33 A), quoting 348 F.2d at 354.

---

[7] E.g., *National Bus Traffic Assn.* v. *United States*, 143 F.Supp. 689 (D.C. N.J. 1956).

[8] The Board summarized its conclusions as follows:

> "In short, the Senate version of the bill as well as the Senate Committee Report make clear that the Senate was dissatisfied with the Board's historic refusal to authorize inclusive tour charters. On the other hand, the House bill contained no reference one way or the other to all-expense tours, and the House Committee Report clearly indicates that this matter was to be left to the Board to determine. The ultimate adoption of the House version strongly supports a construction of the statute in line with the House Committee Report." (JA 343a).

[9] The Board found that these statements were to some extent conflicting and were not dispositive of Congressional intent in light of the Committee reports and overall purposes of Congress. (JA 343a).

The court also dealt with the weight to be accorded the floor statements. It found that these statements must be read in light of the congressional purpose to prohibit individually ticketed services and reflected a natural concern that the carriers not be permitted to avoid the prohibition by indirect means. The court examined the substance of the new services, as defined by their detailed terms and conditions, and found them fully consistent with congressional purposes. In any event, the court found, Committee reports showing an intent to leave the matter to the agency must take precedence over the floor statements to the contrary.

The Second Circuit found the matter capable of determination on the basis of what members of Congress said, making it unnecessary to speculate about Congress' basic objectives, or the abuses it was attempting to correct. Since all-expense tours literally involve "the selling of individual tickets to the general public" (Appendix A, p. 17 A), the court found them to be "individually ticketed" services. And since leading legislators had declared on the floor that the bill excluded "all-expense" tours, the court concluded, without analysis, that the particular type of all-expense tour charter authorized by the Board was prohibited. Consideration of congressional purposes was deemed unnecessary by the court since the floor statements represented a binding "congressional declaration." [10]

In order to rely so heavily upon a literal reading of the floor statements, the court had to find—and it did—

[10] "We therefore reject the argument that the legislators' concern was with abuses growing out of the Board's prior practice of allowing supplemental carriers to perform limited scheduled individually ticketed travel. Regardless of the extent to which there may have been legislative concern based on this prior experience, indeed whether or not the expression of concern was misguided or wholly unwarranted, it was in fact manifested in a congressional declaration binding on both the Board and this court, that was clearly intended to forbid the Board to authorize inclusive tours." (Appendix A, p. 21A).

no conflict between these statements and the Committee reports. Indeed, the court concluded that the reports "seem to support petitioners' view" or are at worst "ambiguous." (Appendix A, p. 23 A). Three cases cited by the D. C. Court *in support of* primary reliance on Committee reports were cited by the court as justifying *its* reliance on floor statements as "authoritative indicators of congressional intent." (Appendix A, p. 23 A).[11]

In finding no difficulty with the Committee reports, the court below had to—and did—ignore significant portions of both reports. Thus the statement of the Senate Committee that all expense tour charters conform to "the traditional concept of charter" and are "a very different sort of service from individually ticketed transportation" was not dealt with. Nor did the court pay any heed to the decision of the House Committee not to "freeze the definition of charter service into law." In giving authoritative weight to floor statements, the court had to—and did—ignore the warnings of knowledgeable judges and observers against "manufactured" legislative history—and the indications of such in this instance.[12]

Finally, in assuming that terms such as "individually ticketed," "general public," and "all expense tour" have fixed, literal and commonly accepted meanings, the court bypassed the real issue before it. Such labels cannot possibly suffice to describe congressional intent without the kind of analysis, such as made by the D. C. Circuit,

---

[11] The cases are: *United States* v. *International Union United Auto, etc., Workers*, 352 U.S. 567, 585 (1950); *Nicholas* v. *Denver & R. G. W. R. Co.*, 195 F.2d 428 (10th Cir. 1952); *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 474 (1920).

[12] The fact that two of the floor statements in the House were identical—word for word—and that powerful pressure groups were at work in opposition to the legislation tends to cast some doubt on the court's view of these statements as spontaneous outpourings of Congressional intent.

of the specific and carefully defined services at issue. Even on conventional charter flights, which Congress clearly intended to authorize, the passengers are often "individually ticketed". They are no less members of the "general public" than passengers on inclusive tour charters. And conventional charters are "in direct competition with the regularly scheduled airlines," who possess charter authority.

The agency saw, as the court below did not, that the possible arrangements for chartering aircraft are infinite. Whether such arrangements constitute a "charter trip" therefore depends upon their substance, not their form or their name.[13] Under these circumstances it would have been extremely difficult for Congress to specify what it meant by a "charter." The Committee Reports show that Congress eventually realized just that and decided to leave the issue to the Board. Unfortunately, the Court below did not realize it. In attempting to deal with charter transportation on the basis of loose terms instead of factual details it stumbled into a pitfall which the Congress, the agency, and a sister circuit were wise enough to avoid.

---

[13] At one extreme "all expense tour charter" could be a subterfuge for individually ticketed service, cloaked by a meaningless tour requirement. On the other hand, it could involve not only the formal requisites of a charter hiring but other features which establish it as *bona fide* group transportation—such as participation in a common sightseeing itinerary, for a sustained period, with the same people. The Board regulation in issue requires that an "inclusive tour" be a round trip lasting at least 7 days and stopping at a minimum of three places other than the point of origin. It must include all hotel accomodations and all necessary surface transportation. The tour price may not be less than 110% of the lowest available fare by scheduled carrier. See Part 378.2(b), JA 416a-417a and JA 1096a. These requirements are actually more rigid than for participation in conventional pro rata charters.

2. The decision below has major significance for the traveling public, the air transportation industry, and the role of the United States in foreign air transportation.

As it now stands, an "inclusive tour charter" between points in the fifty states is lawful; a charter meeting the identical C.A.B. definition but operating between the United States and a foreign point is unlawful. Neither the statute nor legislative history makes any distinction between domestic or foreign "charter trips." The anomaly is solely due to the opposing views of the courts.

This conflict is of major significance. Inclusive tour charters, despite their newness, represent a significant form of public transportation. The Board, adopting its Examiner's conclusions, found that there "are still vast areas for future development" of air transportation (JA 96a). It noted that these charters "will generally attract a class of traveler to air transportation not now using scheduled services" (JA 345a). It agreed with its Examiner that these charters "hold real promise both domestically and internationally as the instrumentality most likely to accomplish a significant expansion of pleasure air travel, the segment of the air travel market offering the greatest potential for exploitation." (JA 140a). C.A.B. records for the short period in which this authority has been in effect show that, despite the damaging effect of the litigation surrounding the Board's awards, the potential is beginning to be tapped. Approximately 600 inclusive tour charters, domestic and international, have been approved by the Board. These represent approximately 100,000 passengers, and over $11 million in air transportation revenues.[14]

Inclusive tour charter authority is also vital to the supplemental air carriers. The Board has found that

[14] Based on a tabulation of inclusive tour charter contracts approved by the C.A.B. through November 1, 1967.

these carriers are "providing a useful public service responsive to a public need" and are "making a valuable contribution to the American air transportation system." (JA 136a). The record before the Board showed, however, that supplemental air carriers are relatively small, that their dependence on military charters has been unduly great (70% of all revenues, JA 80a), and that their economic well being required increased access to civil charter revenues. (Such revenues amounted to but $25 million in 1964 (JA 72a)). The revenue developed thus far in the brief history of inclusive tour charters demonstrates that they can contribute significantly to the economic growth and well being of the supplemental carriers. That contribution however is now stultified by the legal limbo created by the Second Circuit.

The case is also important because it affects the balance which the Board and President have struck between inclusive tour authority for supplemental air carriers and foreign air carriers. Since awarding the authority at issue the Board, with Presidential approval, has been disposed to grant inclusive tour charter authority to foreign charter carriers in order to encourage a favorable climate for foreign operations by U. S. supplemental carriers.[15] If the decision of the court below is left standing the entire international inclusive tour market will be in the hands of foreign carriers, a result obviously contrary to the intent of the President and best interests of the United States.

---

[15] E.g., *Sudflug Suddeutsche Fluggesellshaft,* C.A.B. Order E-24697, January 31, 1967, p. 5; *Caledonian Airways (Prestwick) Ltd.*, C.A.B. Order E-25017, April 12, 1967, p. 5. These awards are final and, pursuant to 49 USC 1486, are not judicially reviewable.

CONCLUSION

For the foregoing reasons petitioners pray that this petition for a writ of certiorari be granted.

Respectfully submitted,

RAYMOND J. RASENBERGER
888 17th Street, N. W.
Washington, D. C. 20006
Counsel for World Airways, Inc. and Purdue Aeronautics Corp.

CLAYTON L. BURWELL
1815 H Street, N. W.
Washington, D. C. 20006
Counsel for Trans International Airlines, Inc.

LEONARD N. BEBCHICK
818 - 18th Street, N. W.
Washington, D. C. 20006
Counsel for Saturn Airways, Inc.

GEORGE BERKOWITZ
233 Broadway
New York, New York
Counsel for Capitol International Airways, Inc.

STEPHEN D. POTTS
910 - 17th Street, N. W.
Washington, D. C. 20006
Counsel for American Flyers, Inc.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 510-11—September Term, 1966.

(Argued June 15, 1967. Decided July 20, 1967.)

Docket Nos. 30947-30948

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,
Petitioners,

v.

CIVIL AERONAUTICS BOARD,
Respondent,

WORLD AIRWAYS, INC., ET AL.,
Intervenors.

Before:

HAYS and FEINBERG, *Circuit Judges*, and MCLEAN, *District Judge.**

Petition to review orders of the Civil Aeronautics Board awarding certain supplemental air carriers certificates which authorize them, *inter alia*, to operate so-called "inclusive tours" between points in the United States and various foreign points.

Orders set aside to the extent that they authorize "inclusive tours." Case remanded for further proceedings not inconsistent with this opinion.

---

* Of the Southern District of New York, sitting by designation.

EDWARD R. NEAHER, New York, New York (Carl S. Rowe, Gertrude S. Rosenthal and Chadbourne, Parke, Whiteside & Wolff, on the brief), *for Petitioners.*

WARREN L. SHARFMAN, Associate General Counsel, Litigation and Legislation, Civil Aeronautics Board (Donald F. Turner, Assistant Attorney General, Joseph B. Goldman, General Counsel, Civil Aeronautics Board, O. D. Ozment, Deputy General Counsel, Civil Aeronautics Board, Robert L. Toomey, Attorney, Civil Aeronautics Board and Howard E. Shapiro, Attorney, Department of Justice, on the brief), *for Respondent.*

CHARLES A. HOBBS, Washington, D. C. (Glen A. Wilkinson, Paul S. Quinn and Wilkinson, Cragun & Barker, on the brief), *for Intervenor American Society of Travel Agents, Inc.*

CLAYTON L. BURWELL, Washington, D. C., Counsel for Trans International Airlines, Inc., and RAYMOND J. RASENBERGER, Washington, D. C., Counsel for Purdue Aeronautics Corp., and World Airways Inc. (Stephen D. Potts, Washington, D. C., Counsel for American Flyers Airlines, Inc., George Berkowitz, New York, New York, Counsel for Capitol Airways, Inc., and Leonard N. Bebchick, Washington, D. C., Counsel for Saturn Airways, Inc., on the brief), *for the Intervenor Supplemental Air Carriers.*

HAYS, *Circuit Judge*:

This is a petition to review five orders of the Civil Aeronautics Board awarding certain supplemental air carriers, intervenors in this action, certificates which authorize them to operate so-called "inclusive tours" [1] between points in the United States and various foreign points. Petitioners' principal contention is that the Board lacked the power to authorize inclusive tours. The jurisdiction of this court is invoked under Section 1006 of the Federal Aviation Act of 1958, 49 U. S. C. § 1486. We hold that the Board lacked the power to authorize "inclusive tours" and that the challenged provisions should be stricken from the certificates awarded to the intervening carriers.

I.

Petitioners are three air carriers holding certificates of public convenience and necessity issued by the Civil Aeronautics Board under Section 401(d)(1) of the Federal Aviation Act, 49 U. S. C. § 1371(d)(1), authorizing them to engage in air transportation between the United States and various points abroad. Each of the intervenors, with the exception of the American Society of Travel Agents, Inc., is a supplemental air carrier [2] defined under Section

[1] The term "inclusive tour" is, generally speaking, synonymous with the more familiar "all expense" or "package" tour. Such a tour includes various land arrangements, for example, hotel accommodations, meals and sightseeing, as well as air transportation. "Inclusive tour charters" are arrangements by which the air carrier charters a plane to a "tour operator" or travel agent who sells the entire package to the public for a single price per person. In this opinion we adopt this terminology which was used by the Board although not by the hearing examiner.

[2] At earlier stages of the development these carriers were known variously as "non-scheduled" or "large irregular" air carriers. Their history has been marked by frequent controversy and litigation. See, e.g., *Great Lakes Airlines, Inc.* v. *Civil Aeronautics Board*, 294 F. 2d 217, 221, n. 6 and cases there cited (D. C. Cir.), cert. denied, 366 U. S. 965 (1961).

101(32) of the Act, 49 U. S. C. § 1301(32), as "an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation." As the name implies, the services of supplemental air carriers are intended to supplement those of the scheduled carriers. See Section 101(33) of the Act, 49 U. S. C. § 1301(33).

In July 1962, Congress enacted Public Law 87-528, 76 Stat. 143, amending the Federal Aviation Act of 1958. The amendment established a comprehensive system for the certification and regulation of supplemental air carriers. In particular, it empowered the Civil Aeronautics Board to grant certificates of public convenience and necessity authorizing these carriers to engage in "supplemental air transportation." Section 401(d)(3), 49 U. S. C. § 1371(d)(3).[3] "Supplemental air transportation" was defined as "charter trips in air transportation . . . to supplement the scheduled service" which regular route carriers such as petitioners are authorized to provide. Section 101(33), 49 U. S. C. § 1301(33).

On March 11, 1966 the Board handed down opinions and orders in proceedings known as the *Supplemental Air*

---

[3] § 1371. *Certificate of public convenience and necessity*

(d) *Issuance*

* * * * *

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this chapter.

Service Proceeding and the *Reopened Transatlantic Charter Investigation.*

One of the orders, issued in the *Supplemental Air Service Proceeding,* Docket No. 13795, approved the certification of certain supplemental air carriers in the domestic area and authorized them to operate inclusive tour charters. CAB Order No. E-23350 (March 11, 1966). Other orders issued under the same name and docket number, (1) approved the certification of certain supplemental carriers to operate in various overseas and foreign areas [4] and authorized them to operate inclusive tours (CAB Order No. E-24237 (March 11, 1966)), and (2) adopted proposed regulations defining various terms and setting out the scope of the carriers' inclusive tour authorization (CAB Order No. E-24238 (March 11, 1966)).

Two other orders were issued the same day under the title *Reopened Transatlantic Charter Investigation* (All-

[4] Section 101(21) of the Act, 49 U. S. C. § 1301(21) provides:

"Interstate air transportation," "overseas air transportation," and "foreign air transportation," respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possesion of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

Expense Tour Phase), Docket No. 11908. Under the first of these orders, the right to operate inclusive tours was added to the certificates previously granted to Capitol Airways and Saturn Airways authorizing them to engage in supplemental air transportation in the transatlantic area. CAB Order No. E-24240 (March 11, 1966). The second order adopted for the authorized transatlantic supplemental cariers the regulations referred to above. (CAB Order No. E-24241 (March 11, 1966).

Under the statute the orders concerned with foreign air transportation entered in the *Reopened Transatlantic* and *Supplemental Air Service* cases were subject to the President's approval. See Section 801 of the Act, 49 U. S. C. § 1461.[5] Those are the orders now before us for review. No presidential approval was required for the domestic orders entered in the *Supplemental Air Service Proceeding*. They immediately became final and subject to judicial review. The petitioners in the instant case were among the parties who sought judicial review of the Board's domestic orders in the Court of Appeals for the District of Columbia Circuit, contending primarily that the Board exceeded its statutory powers in granting supplemental carriers inclusive tour authority. That court had previously decided the "split charter"[6] case, *Ameri-*

[5] § 1461. *The President of the United States*

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

[6] A split charter "is simply the process of chartering one half of an aircraft to each of two unrelated charter groups." *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354 (D. C. Cir. 1965).

can Airlines, Inc. v. *Civil Aeronautics Board*, 348 F. 2d 349 (D. C. Cir. 1965), in which it had said:

> "Congress intended, although not without limits, that the Board should be free to evolve a definition [of 'charter trips,' 49 U. S. C. § 1301(33)] in relation to such variable factors as changing needs and changing aircraft . . . ." 348 F. 2d at 354.

Relying in part on the quoted statement and in part on its own analysis of the relevant legislative history, the court rejected the contention that Congress had not empowered the Board to authorize inclusive tours. *American Airlines* v. *Civil Aeronautics Board*, 365 F. 2d 939 (D. C. Cir. 1966).

Thereafter, on September 27, 1966, the orders concerning foreign air transportation were approved by the President. Petitioners now seek review of the orders in this court contending that the Board exceeded its statutory powers in granting inclusive tour authority to supplemental air carriers. They also urge that the Board erred in denying them a hearing before it granted inclusive tour authority to the supplemental carriers involved in the *Reopened Transatlantic Charter Investigation* and that the orders are unlawful under the statute since they were approved by only two members of the five man Board, one member dissenting and two not participating.

In view of our decision that the grant of authority for inclusive tours was beyond the Board's power, we find it unnecessary to reach the other points raised by petitioners.

The Board contests petitioners' claims on the merits. It also argues that its power with respect to the orders in question was conclusively determined in the prior action involving these petitioners, *American Airlines* v. *Civil Aeronautics Board*, *supra*, 365 F. 2d 939, and that the doctrine of *res judicata* precludes relitigation of this issue.

II.

The Board has moved that the appeal be dismissed or transferred to the Court of Appeals for the District of Columbia Circuit. It is conceded that our court has jurisdiction of the petition and that venue is proper under Section 1006 of the Act, 49 U. S. C. § 1486. However, the Board argues that petitioners are guilty of forum-shopping, seeking a determination from this court contrary to that reached by the District of Columbia Circuit, thus enhancing their opportunity for review in the Supreme Court of the legal issues here tendered. We are urged to transfer the appeal, either under the provisions of 28 U. S. C. § 2112,[7] or in the exercise of our inherent discretionary power.

Section 2112 authorizes transfer only where "proceedings have been instituted in two or more courts of appeals with respect to the same order." It is clear that the orders before us are not the same as those reviewed by the Court of Appeals for the District of Columbia Circuit. See *Far East Conference* v. *Federal Maritime Comm'n*, 337 F. 2d

---

[7] § 2112. Record on review and enforcement of agency orders.

(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record . . . . If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all of the proceedings with respect to such order to any other court of appeals.

146, 148 n. 1 (D. C. Cir. 1964), cert. denied, 379 U.S. 991 (1965).

Even assuming that this court has inherent discretionary power to transfer a case to another court of appeals in the interests of orderly judicial administration (but see *Gulf Oil Corp.* v. *Federal Power Comm'n*, 330 F. 2d 824 (5th Cir. 1964)), we find nothing in the decided cases that would justify us in transferring this case to the District of Columbia Circuit. We have jurisdiction of the action and, since petitioners' principal place of business is in the Second Circuit, venue is properly laid. Cf. *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 343 F. 2d 905 (8th Cir. 1965); *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 337 F. 2d 249 (10th Cir. 1964). Reaching the merits in this case will not require us to construe a prior order of another circuit (cf. *Pacific Gas & Electric Co.* v. *Federal Power Comm'n*, 272 F. 2d 510 (D. C. Cir. 1958) (accepting transfer from 9th Circuit)) and we are not presented with the very unusual circumstances thought by the court to justify transfer in *Eastern Air Lines* v. *Civil Aeronautics Board*, 354 F. 2d 507 (D. C. Cir. 1965).

In the absence of any showing of inconvenience to respondent, we are not convinced that there are any interests of sound judicial administration which suggest that this case should be transferred. We can perceive no reason for treating this case as an exception to the principle affording a litigant wide latitude in his selection of a forum where Congress has given him a choice.

III.

The Board's motion to dismiss is based on its contention that the doctrine of *Chicago & S. Air Lines* v. *Waterman S. S. Co.*, 333 U.S. 103 (1948), precludes review of the Board's challenged orders and that, in any event, principles of *res judicata* prevent petitioners from reliti-

gating the issues. We hold that neither the *Waterman* doctrine nor principles of *res judicata* bar us from deciding the merits of petitioners' claim.

In the *Waterman* case petitioner sought to invalidate a Board order awarding route authority for overseas and foreign air transportation. In accordance with Section 801 of the statute, 49 U. S. C. § 1461 (reprinted in footnote 5 *supra*), the order had been submitted to the President and had been approved by him. Petitioner did not challenge the regularity of the Board's proceedings and apparently raised no issue as to the Board's statutory authority; instead it attacked the correctness of the Board's findings and the adequacy of the evidence supporting them. The Supreme Court held that:

> "[O]rders of the Board as to certificates for overseas or foreign air transportation are not mature and are therefore not susceptible of judicial review at any time before they are finalized by Presidential approval. After such approval has been given, the final orders embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate." 333 U.S. at 114.

We need not decide whether, as has been argued, the *Waterman* decision rests on a misinterpretation of Section 1006 of the Act, 49 U. S. C. § 1486 providing for judicial review of the Board's orders. See Miller, the *Waterman* Doctrine Revisited, 54 Geo. L. J. 5, 6-9 (1965). We agree with the Court of Appeals for the District of Columbia Circuit that the *Waterman* case does not "govern a situation where the action of the Board, before the matter reaches the President, is beyond the Board's power to act." *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d at 352. As the court there stated:

> "Clearly, *Waterman* presupposes lawfully exercised congressional authority in the Board's action, in the

first instance, as an indispensable predicate, without which there is nothing Presidential action can approve." *Ibid.*; *cf. id.* at 354-55 (concurring opinion); see generally, Miller, *op. cit. supra.*

Waterman, therefore, presents no obstacle to the attack on the Board's orders in this case.

We also reject the Board's contention that the doctrine of *res judicata* bars further litigation of the issues now before us.

The principles to be applied were summarized by the Supreme Court in *Commissioner* v. *Sunnen*, 333 U.S. 591 (1948):

> "[I]f the very same facts and no others are involved in the second case . . . the prior judgment will be conclusive as to the same legal issues which appear, assuming no intervening doctrinal change. But if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case." 333 U.S. at 601 (footnote omitted); see *Consolidated Edison Co.* v. *United States*, 279 F. 2d 152, 154 (2d Cir. 1960), aff'd 366 U.S. 380 (1961); cf. *Federal Power Comm'n* v. *Amerada Petroleum Corp.*, 379 U.S. 687, 690 (1965); *United States* v. *Stone & Downer Co.*, 274 U.S. 225 (1927); *Grandview Dairy* v. *Jones*, 157 F. 2d 5, 9, 10 (2d Cir.), cert. denied, 329 U.S. 787 (1946); see generally Developments in the Law—*Res Judicata*, 65 Harv. L. Rev. 818, 843-44 (1952).

More recently, in *Yates* v. *United States*, 354 U.S. 298 (1957), the Court said that the

> "doctrine makes conclusive in subsequent proceedings only determinations of fact, and mixed fact and law, that were essential to the decision. *Commissioner* v. *Sunnen*, 333 U.S. 591, 601-602; *Tait* v. *Western Maryland R. Co.*, 289 U.S. 620 [1933]; *The Ever-*

greens v. *Nunan*, 141 F. 2d 927, 928 [(2d Cir.), cert. denied, 323 U.S. 720 (1944)]." 354 U.S. at 336; See Restatement, Judgments § 70, comment e.

The operative facts in this case, involving overseas and international air transportation, are different from those before the District of Columbia Circuit in the domestic charter case. Separate exhibits relating to each area were admitted in the proceedings before the Board. In their opinions the Board and examiner considered each area separately, noting, for example, the different amounts of charter traffic involved and the different consequences, in terms of potential diversion of passengers from the regularly scheduled carriers, that inclusive tours would have in each market. The orders here challenged became final at a different time and are clearly distinguishable from those involved in the domestic charter litigation.

None of the cases cited by the Board supports the conclusion that principles of *res judicata* preclude litigation of the question of law here involved. For example, the "order" challenged in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 257 F. 2d 926 (3d Cir. 1958) was merely a phase of the order which had been previously upheld by this court in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 247 F. 2d 646 (2d Cir. 1957), cert. denied, 355 U.S. 912 (1958). Petitioner was thus properly precluded from relitigating the issue. *Bartsch* v. *Washington Metropolitan Area Transit Comm'n*, 357 F. 2d 923 (4th Cir. 1966) is distinguishable on similar grounds.

This court has said that "the law of collateral estoppel is 'growing law.'" *United States* v. *Russell Mfg. Co.*, 349 F. 2d 13, 18-19 (2d Cir. 1965); see also *B. R. DeWitt, Inc.* v. *Hall*, 19 N. Y. 2d 141, 278 N. Y. S. 2d 596 (1967). Nevertheless judicial aversion to forum shopping is not a sufficient ground for precluding litigation of a question of law by extending the doctrine of *res judicata* into areas

traditionally governed by "the ordinary rule of stare decisis." *Commissioner* v. *Sunnen, supra,* 333 U.S. at 601; cf. *Island Airlines, Inc.* v. *Civil Aeronautics Board,* 363 F. 2d 120, 123 (9th Cir. 1966). We therefore consider ourselves free "to make an independent examination of the legal matters at issue." *Commissioner* v. *Sunnen, supra,* 333 U.S. at 601.

IV.

The question before us is whether the Board's statutory authority to issue certificates of public convenience and necessity for "supplemental air transportation," defined as "charter trips in air transportation," (Section 101(33) of the Act, 49 U. S. C. § 1301(33)) includes the power to authorize inclusive tour charters.[8] Consideration of the legislative history of the Act leads us to the conclusion that the term "charter trips" was not intended to embrace the inclusive tour charters authorized by the Board's orders.

The provisions in question were added to the Federal Aviation Act by Public Law 87-528. As we have pointed out this amendatory legislation established a comprehensive system for the certification and regulation of supplemental air carriers. Its principal purposes were to clarify the permissible field of operations of the supplemental carriers,[9] to assure their economic viability, to eliminate

---

[8] The question presented is not whether Congress withdrew from the Board a pre-existing power to grant inclusive tour authority. "[P]rior to 1962 the Board had never authorized inclusive tour authority for the supplementals." *American Airlines* v. *Civil Aeronautics Board, supra,* 365 F. 2d at 946. See also Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 111 (1961).

[9] The statute was in part a response to the decisions in *United Air Lines* v. *Civil Aeronautics Board,* 278 F. 2d 446 (D. C. Cir.), vacated, 364 U. S. 297 (1960) and *American Airlines* v. *Civil Aeronautics Board,* 235 F. 2d 845 (D. C. Cir. 1956), cert. denied,

marginal and unsafe operators and "to maintain the regulatory scheme of the Federal Aviation Act and the protection of the certificated carriers such as petitioners by eliminating unregulated individually ticketed point-to-point competition from the supplementals." *American Airlines, Inc.* v. *Civil Aeronautics Board, supra*, 365 F. 2d at 944-45; see authorities cited *id.*, at n. 8.

The bill which evolved into Public Law 87-528 was prepared by the Board and introduced in both houses of Congress early in the 87th Congress. See S. 1969, 87th Cong., 1st Sess. (1961); H. R. 7318, 87th Cong., 1st Sess. (1961). Also introduced in the House was a bill proposed by the supplemental air carriers, H. R. 7512, 87th Cong., 1st Sess. (1961).

The definition of "supplemental air transportation" found in the Board's bill [10] would have permitted the Board to certify supplemental air carriers to perform a broad range of services including not only existing charter services but also the limited individually ticketed trans-

---

353 U. S. 905 (1957), which the Board thought had placed in doubt the statutory basis for the continued operation of supplemental carriers under existing law. See Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 5, 281-83 (1961); Hearings Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess. 10, 13, 29 (1961).

[10] The Board's bill provided:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

portation for the general public that was then permitted under temporary legislation passed by Congress. See Public Law 86-661, 74 Stat. 527 (1960); H. R. 7318, Section 2, 87th Cong., 1st Sess. (1961); see also Public Law 87-528, Section 7, reprinted after 49 USC § 1371. The definition contained in the bill proposed by the supplemental carriers went even further. It would have authorized "unlimited charter operations on a planeload basis for the carriage of passengers and property . . . with the word 'charter' herein being defined as air transportation performed pursuant to an agreement for the use of the entire capacity of an aircraft . . . ." H. R. 7512, 87th Cong., 1st Sess. (1961). It also would have permitted "individually ticketed passenger . . . operations . . . in interstate, overseas and territorial air transportation." *Ibid.*

Hearings at which representatives of the Board, the scheduled aircarriers and the supplementals all testified were held in June, 1961, before the Aviation Subcommittee of the Senate Committee on Commerce and before a Subcommittee of the House Committee on Interstate and Foreign Commerce. At the hearings the Board made clear its opposition to any arrangement that would permit travel agents to solicit the general public in forming charter groups. See, e.g., Senate Hearings, *supra* n. 9, at 29.

Following the hearings each committee reported out its own bill. Under the Senate Bill the Board was expressly empowered to authorize supplemental carriers to operate inclusive tours.[11] With the express exception of the "all

[11] The bill defined "charter service" to mean:

"air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not

expense-paid tour," the Senate bill was intended to prevent the Board from authorizing "individually ticketed service whether offered by an air carrier directly or by a travel agent." S. Rep. No. 688, 87th Cong., 1st Sess. 13-14 (1961). However it did not, as the Board contends, require that supplementals be certificated to operate inclusive tours. Its language was merely permissive, authorizing the Board to grant such authority when required by the public need and consistent with the capability and interests of the particular carrier. "[T]he bill does not require the Board to grant every supplemental carrier any particular charter authority." See S. Rep. No. 688, 87th Cong., 1st Sess. 12-13 (1961).

The bill passed the Senate on August 28, 1961.

The bill reported out by the House Committee, like the Senate bill, worked substantial changes in the legislation drafted by the Board. However, unlike the Senate bill, the House version did not define the term charter although that term is found in the bill's definition of supplemental air transportation.[12] The definition of "supplemental air transportation" included in the House bill was ultimately enacted by Congress as part of Public Law 87-528. See 49 U. S. C. § 1301(33).

Of particular importance in deciding what was the intended scope of the Board's powers under this bill which

---

include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour."

[12] "(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

was passed by the House on September 18, 1961, is the statement of the House Committee that its bill "would give the Board some, but not all, of the authority requested by it. The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate supplemental carriers, especially, in the field of individually ticketed operations." H. R. Rep. No. 1177, 87th Cong., 1st Sess. 6-7 (1961).

In deciding whether grant of inclusive tour authority violates the limitations of the statute it must be remembered "that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel." *American Airlines* v. *Civil Aeronautics Board, supra,* 348 F. 2d at 354. See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1967).

It is clear that the fact that the Board has the power to define "charter" to include split charters (see *American Airlines* v. *Civil Aeronautics Board, supra,* 348 F. 2d 349), a device permitting the Masons and Elks each to charter one half of the capacity of an aircraft, does not mean that the Board is free to adopt a definition that contravenes basic policies laid down in the Act. To permit the selling of individual tickets to the general public in direct competition with the regularly scheduled airlines, regardless of whether such selling is done through the medium of a travel agent who has first "chartered" the plane, does violate basic policies of the Act. Any lingering ambiguities clouding this issue are dispelled by the subsequent history of the House and Senate bills, to which we now turn.

The conflicting House and Senate bills were submitted to a Conference Committee which reported out a substitute bill that was ultimately enacted as Public Law 87-528. The substitute followed the House version, eliminat-

ing the definition of the term "charter" found in the Senate bill. It is clear from the conference report that one purpose of the Committee in adopting the provisions of the House bill was to prohibit "individually ticketed and waybilled services on a permanent basis." [13] See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1962).

Even more direct and more persuasive evidence is available concerning the intention of the conferees in striking from the bill the provision that would have permitted all expense package tours. Several of the bill's floor managers addressed themselves to this subject during the debate on the bill in their respective houses. They were unanimous in declaring that the "all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in [the House's] position on that." 108 Cong. Rec. 12322 (June 29, 1962) (remarks of Rep. Williams); see remarks of Rep. Walter, *ibid.* Their statements as to

[13] The statute as enacted permits only two exceptions to the general rule forbidding supplemental carriers to provide individually ticketed services. The first exception, Section 9 of Public Law 87-528 provided a two year period, now expired, during which the Board could authorize such services in order "to permit an orderly transition to an all-charter operation." Reprinted following 49 U. S. C. § 1371; See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 7, 14 (1962). The second authorizes the Board to issue a "special operating authorization" for a period of 30 days subject to renewal for a maximum of 60 additional days. Such authorization, enabling a supplemental carrier to engage in individually ticketed operations, could be issued only on a showing that "the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service," or that there is a temporary requirement for such service between two points not regularly served by a scheduled carrier. Section 417 of the Act, 49 U. S. C. § 1387; see Conference Report, H. R. Rep No. 1950, 87th Cong., 2d Sess. 4 (1962); H. R. Rep. No. 1177, 87th Cong., 1st Sess. 2, 12-13 (1961).

this limitation on the Board's authority went unchallenged.

For example, Senator Scott stated:

> "The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' Such a group could have been assembled from the general public . . . .
>
> The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air transportation. There should be no question about that. The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation," 108 Cong. Rec. 12284-85 (June 29, 1962.)

Senator Thurmond stated:

> "I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision." 108 Cong. Rec. 12285 (June 29, 1962).

In the House, Representative Harris, Chairman of the House Interstate Commerce Committee, made clear that while "the Senate proposed to change the well established meaning of 'charter,'" the House objected to the change.

> "A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for a particular purpose by a single engaging party. Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to.

That is why the House objected to the proposal of the Senate including the 'all-expense tour' language. As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter." 108 Cong. Rec. 12322 (June 29, 1962).

He went on to read a statement, identical to one submitted later by Representative Collier:

"The bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the bill, as passed by the House, contained no definition of charter.

The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter of 'a group on an all-expense paid tour.' The Senate conferees having receded

from insistence on the all-expense-paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy." 108 Cong. Rec. 12322 (June 29, 1962); see *id.* at 12324 (remarks of Rep. Collier).

Senator Cotton said:

"The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on charter flights to individual members of the general public who were on all-expense-paid tours. I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board." 108 Cong. Rec. 12284 (June 29, 1962).

These statements are specific in rejecting the notion that the term charter can be construed to include all expense tours. We therefore reject the argument that the legislators' concern was with abuses growing out of the Board's prior practice of allowing supplemental carriers to perform limited scheduled individually ticketed travel. Regardless of the extent to which there may have been legislative concern based on this prior experience, indeed whether or not the expression of concern was misguided or wholly unwarranted, it was in fact manifested in a congressional declaration binding on both the Board and this court, that was clearly intended to forbid the Board to authorize inclusive tours.

The Board also argues that many of the statements made on the floor of Congress were directed against split charters as well and that the Board's power to authorize such charters has nevertheless been upheld. See *American Airlines* v. *Civil Aeronautics Board, supra*, 348 F. 2d 349. While we have no occasion to pass on the question of the propriety of split charters we note that Congressional concern with their potential impact is much less

clear from the Committee reports and hearings than is the intention to prohibit individually ticketed operations, in whatever guise, by supplemental carriers. Moreover, the legislative history involved in the inclusive tour question, with one house passing legislation that would have specifically empowered the Board to authorize package tours only to have the provision deleted by the Conference Committee with the floor managers unanimous in their explanations of the change, is not repeated in the case of split charters. See, e.g., 108 Cong. Rec. 12283 (June 29, 1962) (remarks of Sen. Monroney). On the contrary, the provision deleted from the Senate bill would in fact have forbidden split charters. See Section 101(13) of the bill, S. Rep. No. 688, 87th Cong., 1st Sess. 13, 22 (1961) (reprinted n. 11 *supra*).

But the Board urges that in construing the statute we should not give any weight to statements made in floor debate. In determining whether it had the power to authorize inclusive tours, the Board, finding the statute and committee reports clear, declared that there was "no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers." Board Order E-23350 (March 11, 1966).

We do not agree. That Congress adopted the House version of the bill, specifically rejecting the Senate's conflicting version, is of course an extremely significant factor in determining what was Congress' intention with respect to the matters in issue. See, e.g., *First Nat'l Bank v. Walker Bank*, 385 U.S. 252, 258 (1966). It would be foolish, indeed, to disregard the one source of legislative history that explains the reasons for the conference committee's action.

Nor are we here concerned with general remarks made in debate which contradict either the face of the statute

or statements in committee reports. On the contrary, we have before us on the one hand a statute that is not clear on its face and committee reports that seem to support petitioners' view although they can perhaps be deemed ambiguous. On the other hand we have statements made by the floor managers that fully explain the changes in the bill. These floor managers were members of the legislative committees that held extensive hearings and were responsible for formulating the legislation.[14]

Only recently, in circumstances similar to those in the instant case, a unanimous Supreme Court relied on statements made in debate, not only by a sponsor of legislation and by a member of the Conference Committee but also by other members of Congress, and regarded such statements as authoritative indicators of congressional intent. *First Nat'l Bank* v. *Walker Bank*, *supra*, 385 U.S. at 258-60; see also *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 311-23 (1962).

The authorities cited by the Board do not support the view that we may disregard or give little or no weight to statements made on the floor of Congress under the circumstances of this case. In *United States* v. *International United Automobile Workers (UAW-CIO)*, 352 U.S. 567 (1957) although the Court did say that debate is not entitled to the same weight "as carefully considered committee reports," it still examined the debate, finding that it confirmed what was contained in the reports. 352 U.S. at 586-87 & n. 1. *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 474-75 (1921) exhibits a similar treatment of Congressional debate. *Nicholas* v. *Denver & Rio Grande*

[14] For example, Representative Harris was the Chairman of the House Committee on Interstate and Foreign Commerce, Representative Williams was Chairman of the Subcommittee on Transportation and Aeronautics of which Representative Collier was a member, Senator Monroney was chairman of the Subcommittee on Aviation, Senators Thurmond, Cotton, Morton and Scott were on that committee.

W. R. R., 195 F. 2d 428, 431-32 (10th Cir. 1952), whatever dictum the opinion may contain to the contrary, fully supports the position that we take here.

If, as we hold, Congress did not give the Board power to authorize inclusive tours, it is immaterial whether, as the Board contends, the proposed regulations will be effective in curbing abuses of the inclusive tour certificates.

Since the Motor Carrier Act is quite different from the Federal Aviation Act in language, statutory structure and legislative history, the fact that all expense tours have been approved under the Motor Carrier Act (see *National Bus Traffic Ass'n.* v. *United States*, 143 F. Supp. 689 (D. N. J. 1956), aff'd *per curiam*, 352 U.S. 1020 (1957)), is not at all persuasive in construing Public Law 87-528, even if we assume that the tours there authorized are similar to those approved by the Board in this case, an assumption that petitioners vigorously contest.

We hold that the certificates before us awarding inclusive tour authority to supplemental air carriers in foreign and overseas transportation are invalid.

Since our conclusion that the Board acted in excess of its statutory powers is dispositive of the case, we need not pass on the other points raised by petitioners.

The orders are set aside and the case remanded to the Board for futrher proceedings not inconsistent with this opinion.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,159

AMERICAN AIRLINES, INC., ET AL., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, RESPONDENT
SATURN AIRWAYS, INC.,
WORLD AIRWAYS, INC.,
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
TRANS INTERNATIONAL AIRLINES, INC.,
MODERN AIR TRANSPORT, INC.,
AMERICAN FLYERS AIRLINE CORPORATION,
JOHNSON FLYING SERVICE, INC.,
PURDUE AERONAUTICS CORPORATION,
CAPITOL AIRWAYS, INC.,
OVERSEAS NATIONAL AIRWAYS, INC., INTERVENORS

On Petition for Review of an Order
of the Civil Aeronautics Board

Decided July 19, 1966

Mr. James F. Bell, with whom *Mr. Brian C. Elmer* was on the brief, for petitioners. *Mr. George C. Neal* also entered an appearance for petitioners.

Mr. Warren L. Sharfman, Associate General Counsel, Litigation and Legislation, Civil Aeronautics Board, with

whom *Assistant Attorney General Turner*, *Messrs. Joseph B. Goldman*, General Counsel, *O. D. Ozment*, Deputy General Counsel, *Robert L. Toomey*, Attorney, Civil Aeronautics Board, and *Howard E. Shapiro*, Attorney, Department of Justice, were on the brief, for respondent.

Mr. Raymond J. Rasenberger, Attorney for intervenor Purdue Aeronautics Corporation, and *Clayton L. Burwell*, Attorney for intervenor Trans International Airlines, Inc., argued on behalf of all intervenors.

Mr. Leonard Bebchick was on the brief for intervenor Saturn Airways Inc. *Mr. Jerrold Scoutt, Jr.*, was on the brief for intervenor World Airways, Inc. *Mr. Ramsay D. Potts* was on the brief for intervenor American Flyers Airline, Inc. *Mr. Dayton M. Harrington* was on the brief for intervenor Capitol Airways, Inc. *Mr. Warren E. Miller* was on the brief for intervenor Johnson Flying Service, Inc. *Mr. Albert F. Beitel* was on the brief for intervenor Modern Air Transport, Inc. *Mr. Howard S. Boros* was on the brief for intervenor Overseas National Airways, Inc. *Mr. Charles A. Hobbs* was on the brief for intervenor American Society of Travel Agents, Inc.

Mr. Walter D. Hansen also entered an appearance for intervenor Trans International Airlines, Inc.

Mr. Stephen D. Potts also entered an appearance for intervenor American Flyers Airlines Corporation.

Before: DANAHER, *Circuit Judge*, BASTIAN, *Senior Circuit Judge*, and TAMM, *Circuit Judge*.

TAMM, *Circuit Judge*: This case presents essentially a question of statutory construction. It grows out of the protracted and absorbing battle over the years between the regularly scheduled airlines and the so-called "supplemental" airlines. The petitioners here comprise all but one of the domestic "trunkline" air carriers, plus Pan American World Airways. Their traditional role in air trans-

portation has, of course, been to provide regularly scheduled air transportation service. The intervenors are "supplemental air carriers" who have also been known variously as "nonscheduled" and "large irregular" airlines.[1] Their traditional function has been limited to supplementing the scheduled airlines, principally through military and civilian charter service.

In 1962, Congress enacted Public Law 87-528 as an amendment to the Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. § 1301 *et seq.* These amendments authorized the Civil Aeronautics Boards (hereinafter the Board) to issue certificates of public convenience and necessity for "supplemental air transportation," statutorily defined simply as "charter trips in air transportation." Section 101(33) of the Federal Aviation Act of 1958, 72 Stat. 737, as amended, 75 Stat. 467, 76 Stat. 143, 49 U.S.C. § 1301. It is the uncertainty over the meaning of the term "charter trips" which prompts the necessity for interpretation of the statute, particularly as to whether such term embraces "inclusive tour charters." These inclusive tour charters are charters by supplementals to tour operators who, in turn, sell individual space on the chartered aircraft to the general public as part of an "inclusive tour."[2] In order for us to proceed to the actual interpretation of the statute, it is first necessary to briefly delineate the legislative history of the Act and the administrative interpretation which has been placed on the statute by the Board.

---

[1] The American Society of Travel Agents has also intervened in these proceedings for reasons which will become apparent, *infra*.

[2] The term "inclusive tour" is generally synonymous with an "all-expense tour." The Board has adopted the term "inclusive tour" rather than "all-expense tour" because all expenses are not necessarily required to be included in the tour price. We will adopt the Board's terminology in this case.

I.

Legislative History

Early in the 87th Congress, bills which had been prepared by the Board were introduced in both the Senate (S. 1969) and the House (H.R. 7318). Hearings were held in June 1961 before the Aviation Subcommittee of the Senate Committee on Commerce and the Subcommittee of the House Committee on Interstate and Foreign Commerce. Representatives of the Board, the supplemental air carriers, and the certificated air carriers appeared at these hearings.

On August 8, 1961, S. 1969 was reported out by the Senate Committee with committee amendments altering in part the original Board proposal. In its reported bill, the Senate committee proposed that "charter service" should be defined to include authority for tour operators to charter planes from supplementals for the purpose of offering space to individual members of the general public as part of inclusive tours. Sen.Rep. No. 688, 87th Cong., 1st Sess. 1 (1961).[3] In its Report, the Committee specifically noted that

> "it is not the intention of the committee to permit individually ticket service to be offered to the general public under the guise of charter. The proposed statutory definition, therefore, provides that charter shall not include such individual ticketed service

---

[3] "(13). 'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, *but shall not include transportation services offered by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour.*" (Emphasis added.)

whether offered by an air carrier direct or by a travel agent.

This restriction is subject to one exception because *there is one circumstance in which a carrier or travel agent may offer the services to individual members of the public and still conform to the traditional concept of charter.* This is in connection with an all-expense-paid group tour. If a travel agent charters an aircraft for an all-expense-paid tour and then offers to individual members of the public the right to participate as a member of the group, *this is a very different sort of service from individually ticketed transportation.*" Sen. Rep. No. 688, 87th Cong., 1st Sess. 13-14 (1961). (Emphasis added.)

The amended administration bill passed the Senate on August 28, 1961.

Simultaneously with the Senate action, the House committee held hearings and reported out its bill. The House bill did not contain a definition of "charter service," leaving the term undefined, as it was in the then-existing statute. In its Report, the House committe explained its reason for not including a definition of charter service thusly:

"The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.

"Your Committee, however, after considering the problem came to the conclusion that under the circumstances, authority to define charter services *should be left, as at present, with the Board,* subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead into complications. H. Rep. No. 1177, 87th Cong., 1st Sess. 5 (1961). (Emphasis added.)

The House bill, as amended, was passed by the House on September 18, 1961.

With the bills thus at least potentially in conflict, the Senate and House conferees met to resolve their differences. The bill reported out by the conferees did not contain a definition of charter. The conference report to accompany the agreed-upon bill indicated that the conferees had adopted the House version on the issue in question, elimination the definition of "charter service" originally contained in the Senate bill. This conference report, however, did not discuss the reasons why the House version was adopted over that proposed by the Senate.

Petitioners argue here that the Senate "receder" from its position on inclusive tours and that the bill as finally passed withheld from the Board any authority to authorize inclusive tours by supplementals through travel agents. Respondents and intervenor, on the other hand argue that the "recession" by the Senate was only from the position that the Board should be *required* to grant inclusive tour charter authority to the supplementals (which would have been the effect of the original Senate formulation) to the position of the House, which, as explained in its Report, was that "authority to define charter services should be left, as at present, with the Board * * *"

In support of their argument, petitioners point to the statement of six members of the Congress in the legislative debates at the time of the passage of the final bill before both houses of the Congress. Representative of these statements, which will be considered in more detail, *infra*, is that of Senator Scott, a Senate manager of the bill. He stated, in pertinent part, that

> "the committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms

> the established law as to a charter in air transportation. There should be no question about that. The Congress has considered, and rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation. This being the thrust of the congressional action, it would be clearly improper if the Civil Aeronautics Board were hereafter to undertake to rewrite the law and to authorize under guise of charter, all-expense-tour operations * * * ." 108 Cong. Rec. 12284-85 (1962).

The question thus clearly proposed for our determination is whether the Federal Aviation Act of 1958, as amended, limits the Board's power to authorize inclusive tour charters. Before resolving this question, some assistance in making our determination may be forthcoming from a consideration of the Board's resolution of the issue.[4]

II

Administrative Interpretation

In analyzing this question, the Board framed the issue in the following language:

> "Under the definition of supplemental air transportation in section 101(33) of the Act, we may authorize supplemental air carriers to engage solely in 'charter trips.' The argument is made that the term 'charter trip' does not include charters to tour operators acting as indirect air carriers for the purpose of transporting inclusive tour groups whose members are gathered from the general public, and that charters would be mere subterfuges for individually

[4] Although we have primary jurisdiction to interpret the enabling and regulating statutes of administrative agencies, the interpretation placed upon its enabling or regulating statute by the agency itself is not without some weight in the final resolution of such interpretation questions.

ticketed transportation. The argument is based primarily on the claim that, while the statute does not spell out a prohibition against inclusive tour charters, its legislative history expresses such an intention. The examiner correctly rejected this argument." [5]

In resolving the issue, the Board relied primarily upon two propositions: First, that the legislative history of the Amendment demonstrated that the definition of charter was to be left to the Board; and second, that this court's decision in *American Airlines, Inc., et al.* v. *C.A.B.*, —— U.S. App. D.C. ——, 348 F.2d 349, 354 (1965) clearly demonstrates that the question of definition of charter was to be left to the Board. The Board found additional analogical support for its interpretation in precedent and practice in the field of surface transportation, where the legality of inclusive tour charters has long been settled "as against contentions that they are mere subterfuges for individually ticketed transportation." [6]

The Board interpreted the previously delineated sequence of legislative events as clearly indicating that the definition of charter was to remain a function of the Board. It relied heavily upon the House committee report which specifically stated that "authority to define charter services should be left, as at present, with the Board, * * *" H.Rep. No. 1177, 87th Cong., 1st Sess. 11 (1961). Finding the meaning of the statute to be clear, especially as reinforced by the sequence of events in the Senate and the House and the authoritative committee reports explaining these events, the Board did not believe that there was any "sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers." [7]

---

[5] Board Order E-23350 (March 11, 1966).

[6] Board Order E-23350 (March 11, 1966).

[7] Board Order E-23350 (March 11, 1966).

In the 1965 *American Airlines* case cited by the Board (known as the *Transatlantic* case), this court also had occasion to interpret the meaning of the term "charter trips" as used in the 1962 amendments to the 1958 Federal Aviation Act. The specific question presented in that case was whether the Board had the power under the statute to authorize supplemental carriers to charter space to two groups on one aircraft, *id est*, "split charters." The same petitioners in the present case attacked split-chartering there on the ground that the legislative history of the Act demonstrated the Congress intended that the Board should have no authority to authorize supplemental carriers to charter aircraft for "split charters."

This court rejected the argument of the scheduled airlines stating:

> "We are unable to conclude that the term 'charter trips' has a fixed meaning . . . We conclude Congress intended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs . . . We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." 348 F.2d at 354.

The Board summed up its analysis of the legislative history by concluding that:

> "Considering all of the foregoing, we are persuaded that we have the power to authorize inclusive tour charters as 'charter trips' under section 101(33) provided that we preserve the basic distinction between group and individual travel." Board Order E-23350 (March 11, 1966).

Judicial Interpretation

The question which this Court must decide is brought into bold relief against the background heretofore sketched: Given the fact that the term charter trip is not defined in the Act itself, and the further fact that the Board had pre-existing authority to determine the definition of charter, does the legislative history of the Amendments indicate that Congress intended the Board to continue to have this power (such intention being expressed principally in the House committee report), or does the legislative history demonstrate that Congress intended to withdraw such authority from the Board (such intention being expressed in the debates on the floors of the houses of Congress)? Although the question could be more simply stated as whether a clearly demonstrated intention contained in a committee report takes precedence over a clearly demonstrated contrary intention in the floor debates, we do not believe the question to be quite so narrow. The overall policy and purpose of the Act and the demonstrated understanding of the Congressmen as to the meaning of the points in issue must also be taken into account in finally resolving the question. Based upon our analysis of the legislative history and overall policy and purpose of the legislation, we conclude that the Congress did not intend to withdraw this authority from the Board and that the Board's decision in the instant case must therefore be affirmed.

We look first to the Congressional declarations as to the purposes of the Act. Perhaps the most succinct statement concerning the purpose of the legislation was that made by Senator Monroney, who was chairman of the Senate Subcommittee which held hearings on the legislation, and the Senate floor manager of the bill. He stated:

> "Mr. President, this is a very complicated and difficult piece of legislation . . . It seeks to provide a permanent place in the aviation industry for supple-

mental air carriers without adverse effect upon scheduled carriers . . ." 107 Cong. Rec. 17162 (Aug. 28, 1961).

An overall reading of the legislative history indicates that the three primary purposes of the 1962 legislation were: to eliminate irresponsible supplementals, especially those violating safety regulation; to stabilize the operating authority of the supplementals under certificates, including authority to authorize "charter trips" on a broad enough basis so that through performance of civilian and military charter operations the supplementals might remain viable economic organizations capable of meeting supplemental tranportation needs and able to comply fully with safety requirements; to maintain the regulatory scheme of the Federal Aviation Act and the protection of the certificated carriers such as petitioners by eliminating unregulated individually ticketed point-to-point competition from the supplementals.[8]

Apparently the all-consuming quesion with respect to the authorization of inclusive tour charters was whether allowance of such would violate the third purpose of the Act, id est, the prevention of individually ticketed point-to-point competition to the scheduled airlines by the supplementals. This fear arose partly out of the fact that supplementals had previously been allowed to perform scheduled individually ticketed travel not to exceed ten trips per month between any two points, in the United States. Pooling operations between various supplementals caused abuses to grow up in the utilization of this authority. Groups of carriers would combine their operations

[8] See, *e.g.*, S. Rep. No. 688, 87th Cong., 1st Sess. 21 (1961); H. Rep. No. 1177, 87th Cong., 1st Sess. 6 (1961); 107 Cong. Rec. 20081 (Sept. 18, 1961—statement of Rep. Harris); Hearings before Subcommittee of Commerce Committee on H.R. 7512, and H.R. 7675, 87th Cong., 1st Sess., 13, 29, 74, 91, 156, 218-19; Hearings before the Aviation Subcommittee of Commerce Committee on S. 1969, 87th Cong., 1st Sess., 268, 270, 281, 282-83.

and provide daily services claiming at least color of authority under the ten-flight per month authorization. The problem created by the pooling operations was highlighted in the Senate and House Committee Reports. For example, in the House Report it was noted that

> "the de facto pooling of operating authorizations followed by protracted judicial proceedings before the operations could be curtailed had created a serious regulatory problem which the supplemental carrier legislation was designed to eliminate." H. Rep. No. 1177, 87th Cong., 1st Sess. 13 (1961). See also Senate Rep. No. 688, 87th Cong., 1st Sess. 16, *et seq.* (1961).

The scheduled airlines were naturally alarmed that the supplementals were diverting passenger traffic. The ten-trip per month individually ticketed authority was withdrawn from the supplementals as a result of the 1962 legislation. The supplementals were relegated as a result of the legislation to the performance of civilian and military charter service.

It is thus apparent that the concern over individually ticketed authority was essentially a product of the supplementals' previous authority to perform individually ticketed travel not to exceed ten trips per month between any two points in the United States. This authority was completely independent of any charter definition.[9] The question of inclusive tours was, however, a definite part of the question of charter definition. Analysis of the statements of the floor managers in the debates indicates that they were fearful that the same abuses which had grown up through utilization of the individually-ticketed-travel-not-to-exceed-ten-trips-per-month authority would come about as a result of the inclusive tour authorization. For example, Senator Cotton stated that:

---

[9] Sen. Rep. No. 688, 87th Cong., 1st Sess. 11-15 (1961).

"the elimination from the bill of the general Senate language defining charter service should not, however, in my view, be construed as giving the Board any kind of carte blanche with respect to long-established principles of law relating to charters. The Civil Aeronautics Board has, in the past, rejected proposals to water down the safeguards against the abuse of charter service, and I hope the Board will continue to be firm in this respect. The Board has a serious obligation to see that charter services *do not become individually ticketed services through subterfuge or abuse.*" 108 Cong. Rec. 12284 (June 29, 1962). (Emphasis added.)

Senator Thurmond stated:

"I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision.

* * * *

"Air transportation has suffered from the abuses of individually ticketed operations. The law violations in this area have all too frequently extended to infractions of safety provisions as well. It is for this reason that I want to emphasize the insistence of Congress that supplemental charter operations shall be confined to full plane load charter operations exclusively." *Id.* at 12285.

Representatives Harris and Collier submitted identical statements to the effect that

"the law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include

solicitation of the general public or *any device where individually ticketed services would be offered or performed under guise of charter.*" *Id.* at 1232-24. (Emphasis added.)

The primary fear of the legislators was that supplementals would divert traffic from the scheduled airlines through utilization of individual ticketed authority. However, this evil was know to the legislators only through the abuses which grew out of the ten-trip-per-month authority. Prior to 1962 the Board had never authorized inclusive tour authority for the supplementals. Thus it is apparent that the apprehensions of the legislators did not grow out of any experience with inclusive tour charters, but rather was a projected fear based upon the unhappy experience with the ten-trip-per-month authority.

The question therefore arises as to whether authorization of inclusive tour charters will in fact bring about the individually ticketed abuses experienced under the ten-trip-per-month authority. The Board found that such abuses would not ensue. In order to insure that the supplementals were properly regulated in this respect, and to insure that the individual ticketing abuses would not occur, the Board issued stringent regulations at the time of its decision in the instant case to cover inclusive tour charters.[10] The key to this case, we believe, is the fact that the Congress at the time it passed the legislation had no way of knowing specifically how the Board would regulate the actions of the supplementals with respect to inclusive tour charters. Based upon the then past experience, a reasonable fear of the legislators was that inclusive tour charters might be abused in the manner that the ten-trip-per-month authority had been abused so as to make incursions into the scheduled airlines' passenger services. Lacking specific knowledge of the Board's regu-

[10] C.A.B. Special Regulations, Part 378.

lations, the legislators logically relied upon past experience. This analysis is supported by reference to the legislative history. For example, Senator Scott stated:

> "Another essential element is that the person who charters an airplane cannot resell the space to individuals or solicit the general public to buy space. This is necessary to prevent breakdown of the regulatory system, and most particularly the rate regulatory system. If this were not one of the rules, a travel agent could charter an airplane, and then offer the seats to the general public *at less per head than the tariff fares the airplane must observe as to each passenger.*" 103 Cong. Rec. 122284 (June 29, 1962).

The fears of Senator Scott that the regulatory system will be disrupted and that the travel agents will be able to sell seats to the general public at less per head than the price charged by the scheduled airlines are met and answered by the Board's regulation. The regulations specifically require that the tour price charged by the agent can be no lower than 110% of the lowest available fare (including stopover charges) offered by the scheduled route carriers "for individually ticketed service on the circle route beginning at the point of origin, to the various points where stopovers are made, and return to the point of origin." It is apparent, therefore, that under the Board's regulations the inclusive tour charge will always be at least 10% higher than the price of the lowest available fare offered by the competing scheduled airlines for comparable transportation.

We believe that an analysis of the regulations will demonstrate even further that the Board has effectively precluded the possibility that the fears apprehended by the legislators will in fact be realized. In addition to the 110% of the lowest fare requirement already referenced, the regulations require: that each inclusive tour make a minimum of three stops (not including the point of

origin), each stop to be not less than fifty air miles apart; that a "minimum of seven days must elapse between departure and return"; that every tour operation must be performed on a round-trip basis; that the tour price shall include, at a minimum, all hotel accommodations and necessary air or surface transportation between all places on the itinerary, including transportation to and from air and surface terminals utilized at such places other than the point of origin; that every tour must be operated by a regulated tour operator who charters aircraft for such tours from a certified supplemental air carrier.

In addition to these stringent requirements, the Board's regulations require: that *prior approval* of the tour proposal must be obtained from the Board by the tour operator and the supplemental air carrier; that the prospective tour operators file a statement containing a detailed picture of their experience, business structure, and financial condition. The tour operator's application must include, among other data: a statement of the tour operator's qualifications; the time and dates of the flights; the type of aircraft; a detailed statement of the tour itinerary, including such things as the name of the hotels, length of stay, etc.; the tour price; the number of persons expected to participate; the charter price of the aircraft; and samples of the solicitation material to be used to promote the tours. Each application must be verified by the supplemental carrier and tour operator and filed 90 days in advance of the operation. Each application must be served on each direct air carrier serving the points involved in the tour operation and such direct air carriers may object to such tours within ten days thereafter. The sale of tour charters by supplementals is restricted to tour operators granted indirect air carrier authority by the Board pursuant to the Board's regulations, which authority may be suspended by the Board without a hearing. No supplemental air carrier may perform any tour charter trips unless it has on file with the Board a currently effective

charter tariff showing all rates, fares and charges. All tour operators operating inclusive tour charters must furnish a surety bond in the amount of at least twice the charter price. The Board's regulations contain certain requirements pertaining to the contract between the supplemental air carrier and the tour operator, and the contract between the tour operator and the tour participant. The supplemental carrier and the tour operator must make a post-tour report to the Board.

In addition to these stringent restrictions on the supplementals and the tour operators, the Board limited its inclusive tour authorization to a test period of five years and indicated that it would then "review the tour program to determine if it fulfilled its promise." In the interim, the Board noted that experience might show need for modification either "to prevent undue diversion" or to "relax restrictions that may prove too onerous," and noted that its "rule-making powers" would permit it to deal with such situations as they arose. Finally, in summing up its reasons for adopting the inclusive tour charter operation the Board noted:

> "The use of the charter mechanism, combined with the restrictions which we are imposing by regulation, necessarily results in a service to the public which is different in significant respects from that available on scheduled services. In exchange for realizing the price savings accruing from the economies of planeload charter operations, the charter tour passenger is subjected to the rigidities of a group itinerary, must be willing to travel and share facilities with strangers, and must agree to the necessary regimentation that is entailed in group travel. Nor will he have the freedom to select from the multiple daily schedules offered by route carriers, but will be confined to predetermined departure and arrival times selected by the tour operator. Moreover, it is clear that the specially tailored type of service to be

provided is not one which could practicably be furnished by route carriers on their scheduled operations." Board Order E-23350 (March 11, 1966).

The foregoing analysis of the Board's regulations and its reasons for adopting them provides, we believe, a reasonable basis for a conclusion that the individual-ticketing problems foreseen by the legislators will be precluded. We do not find in the Board's actions any arbitrary exercise of its powers, and we believe that its conclusions are supported by substantial evidence on the record as a whole. Moreover, the Board found, in the exercise of its administrative expertise, that a significant amount of the revenues of the supplemental carriers earned through inclusive tour charters would be *newly generated* traffic, rather than traffic diverted from existing services, and that in the long run this will tend to broaden the base for air transportation and ultimately inure to the benefit of the entire air transportation industry, *including the scheduled airlines.*[11] The promotion by the Board of this salutary result is hardly assailable as an arbitrary exercise of its power. In addition, the Board found that the authorization of inclusive tour charters would give the supplementals a new lease on their economic life by helping them to generate more civilian traffic. The principal revenues of supplementals (over 70%) arise from mili-

[11] The hearing examiner found (affirmed by the Board), that inclusive tour charters had been utilized in England and that the British experience has demonstrated that there is no serious diversion from the scheduled airlines. He quoted an advisor to a scheduled airlines as follows:

> "For the most part these were passengers who would not have travelled by air on normal scheduled services. They were persuaded to fly by the attractive prices and great convenience of the packaged holidays offered. The real importance of inclusive tour services to British civil aviation lies in the fact that a very large number of people have been converted into air travellers through the promotional efforts of the organizers of air tours. In this way, the financial and social boundaries of the air travel market have been greatly extended."

tary charters. The Department of Defense now requires that carriers receiving contracts secure "at least 30% of their air transportation revenues during 1966 from commercial sources." The effect of this requirement is that increased civilian business is essential to the maintenance or increase of the vital military charter business. This increase in revenues is also critical to the financial well-being of the supplementals.

We believe that, if the statements of the floor managers are considered in the light of the foregoing analysis, and sight is not lost of the fact that the legislators did not in fact have the Board's regulations before them when the Act was passed, the Board's interpretation of its statutory power comports with the overall statutory intention of Congress. Although specific conflict does exist to some degree between the statements on the floors of the houses, and the Act itself and the House committee report, much of that conflict is dissipated by the above analysis of the evil apprehended by the legislators and the measures adopted by the Board to prevent its occurrence. Any remaining conflict must give way to the generally accepted maxim of statutory construction that reports by the legislative committees responsible for formulating the legislation must take precedence in event of conflict over statements in the legislative debates on the floors of the houses of Congress. See *United States* v. *United Auto Workers*, 352 U.S. 567, 585 (1950); *Nicholas* v. *Denver & R.G.W.R. Co.*, 195 F.2d 428 (10th Cir. 1952); *Duplex Co.* v. *Deering*, 254 U.S. 443, 474 (1920).

Finally, our decision here is in conformity with Judge Burger's well-reasoned opinion in the *American Airlines* case. We believe with Judge Burger that:

> "We are unable to conclude that the term charter trips has a fixed meaning or that Congress intended to restrict the Board to a definition of one aircraft—one charter. We conclude that Congress intended

> although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs and changing aircraft; . . . We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." 348 F.2d at 354.

The order of the Board must therefore be

Affirmed.

APPENDIX C

Statutes Involved

I. Federal Aviation Act of 1958

§ 101 (49 U.S.C.A. 1301). Definitions—

As used in this chapter, unless context otherwise requires—

(33) "Supplemental air transportation" means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401 (d) (3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401 (d) (1) and (2) of this Act.

§ 401 (49 U.S.C.A. 1371). Certificate of public convenience and necessity—Essentiality

(a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

(d) (3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limita-

tions as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

* * * * *

§ 801 (49 U.S.C. 1461). The President of the United States

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

* * * * *

§ 1006 (49 U.S.C. 1486). Orders of Board and Administrator subject to Review

(a) Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

APPENDIX D

JUDGMENT

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentieth day of July, one thousand nine hundred and sixty-seven.

Present: HON. PAUL R. HAYS,
HON. WILFRED FEINBERG, Circuit Judge,
HON. EDWARD C. McLEAN, District Judge.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC.,
Petitioners,

v.

CIVIL AERONAUTICS BOARD,
Respondent,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., PURDUE AERONAUTICS CORP. (PURDUE), AMERICAN FLYERS AIRLINE CORP.,
Intervenors.

A petition for review of orders of the Civil Aeronautics Board together with a motion by the respondent to dismiss the petition for lack of jurisdiction or in the alternative to transfer the action to the United States Court of Appeals for the District of Columbia.

This cause came on to be heard on a transcript of record certified by the Civil Aeronautics Board and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that said orders be and they hereby are set aside and that the action be and it hereby is remanded for further proceedings not inconsistent with the opinion of this court, with costs to the petitioners.

Further ordered, adjudged and decreed that said motion be and it hereby is denied.

A TRUE COPY

/s/ A. Daniel Fusaro
A. DANIEL FUSARO
Clerk

SUPREME COURT, U. S.
No. 946
DEC 22 1967

In the Supreme Court of the United States

OCTOBER TERM, 1967

CIVIL AERONAUTICS BOARD, PETITIONER

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ERWIN N. GRISWOLD,
Solicitor General,

DONALD F. TURNER,
Assistant Attorney General,

GREGORY B. HOVENDON,
ROBERT ELIOT EASTON,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

JOSEPH R. GOLDMAN,
General Counsel,

O. D. OZMENT,
Deputy General Counsel,

WARREN L. SHARPMAN,
Associate General Counsel,
Litigation & Legislation,

[illegible]
Attorneys,
Civil Aeronautics Board,
Washington, D.C. 20428

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Reasons for granting the writ	6
Conclusion	10
Appendix A	11
Appendix B	37
Appendix C	97
Appendix D	109
Appendix E	111

CITATIONS

Cases:

American Airlines v. *Civil Aeronautics Board*, 235 F. 2d 845 certiorari denied, 353 U.S. 905	3
American Airlines v. *Civil Aeronautics Board*, 348 F. 2d 349	4
American Airlines v. *Civil Aeronautics Board*, 365 F. 2d 939	5, 9
C. & S. Air Lines v. *Waterman S.S. Corp.*, 333 U.S. 103	5, 8
National Labor Relations Board v. *Coca Cola Bot. Co.*, 350 U.S. 264	10
Tauck Tours, Inc., Extension—New York, 52 MCC 373, affirmed, *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689, affirmed *per curiam*, 352 U.S. 1020	4, 8
Udall v. *Tallman*, 380 U.S. 1	10
United Air Lines v. *Civil Aeronautics Board*, 278 F. 2d 446 *vacated*, 364 U.S. 297	3

Statutes and Regulations: Page

Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301 *et seq:*

Sec. 101(10), 49 U.S.C. 1301(10) 7, 111
Sec. 101(32), 49 U.S.C. 1301(32) 111
Sec. 101(33), 49 U.S.C. 1301(33) 3, 111
Sec. 401(a), 49 U.S.C. 1371(a) 111
Sec. 401(d)(3), 49 U.S.C. 1371(d)(3) 2, 3, 112
Sec. 801, 49 U.S.C. 1461 ..... 2, 4, 113
Sec. 1006(a), 49 U.S.C. 1486(a) 113

P.L. 87-528, 76 Stat. 143 3
Board's Special Regulations, Part 378 3

Congressional material:

H. Rep. No. 1177, 87th Cong., 1st Sess. 4, 7, 8, 9
S. Rep. No. 1567, 86th Cong., 2d Sess 7
S. Rep. No. 688, 87th Cong., 1st Sess. 8

In the Supreme Court of the United States

OCTOBER TERM, 1967

No.

CIVIL AERONAUTICS BOARD, PETITIONER

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the Civil Aeronautics Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on July 20, 1967.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 11-36) is reported at 380 F. 2d 770. The Board's orders under review in this case (App. B, *infra*, pp. 37-96) adopted by reference its discussion of the jurisdictional question presented in Order E-23350, is-

sued on March 11, 1966, treating the identical issue in the domestic phase of the same consolidated proceeding (App. C, *infra*, pp. 97-108).

JURISDICTION

The judgment of the court of appeals was entered on July 20, 1967 (App. D, *infra*, pp. 109-110). Timely petitions for rehearing and rehearing *en banc* were denied on September 29, 1967. The jurisdiction of this Court is invoked under 49 U.S.C. 1486(f) and 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the Civil Aeronautics Board has the power to authorize supplemental air carriers to carry inclusive tour charters.

STATUTE INVOLVED

Relevant provisions of the Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301 *et seq.*, are set forth in Appendix E, *infra*, pp. 111-114.

STATEMENT

This case involves several orders adopted by the Civil Aeronautics Board, with the approval of the President, pursuant to Sections 401(d)(3) and 801 of the Federal Aviation Act (49 U.S.C. 1371(d)(3), 1461, App. E, *infra*, pp. 112-113), which awarded certificates of public convenience and necessity to various supplemental air carriers authorizing them to engage in "supplemental air transportation (includ-

ing inclusive tour authority) with respect to persons and property" between points in the United States and various foreign points (R. 566-593, 1083-1086, 1107-1118).[1]

In 1962 Congress amended the Federal Aviation Act to empower the CAB to grant certificates of public convenience and necessity for "supplemental air transportation"[2] (49 U.S.C. 1371(d)(3), App. E, *infra*, p. 112). "Supplemental air transportation" was defined as "charter trips in air transportation * * * to supplement the scheduled service" which regular route carriers are authorized to provide (49 U.S.C. 1301 (33), App. E, *infra*, p. 111).

---

[1] The supplemental air carriers are a group of carriers, known at earlier stages of their historical development as "non-scheduled" or "large irregular" air carriers, which instituted operations after the close of World War II under a then-existing blanket exemption for non-scheduled operations. Generally speaking "inclusive tours" are synonymous with the familiar "all-expense" or "package" tour which includes not only the basic air transportation but various land arrangements, such as hotel accommodations, meals, sightseeing, etc., and "inclusive tour charters" are arrangements by which the air carrier charters the aircraft to a "tour operator", a travel specialist who sells the entire package to the public for a single price. All such charters must be conducted in conformity with the detailed requirements of Part 378 of the Board's Special Regulations (R. 414, 604). ("R." citations refer to the pages of the Joint Appendix filed in the court below).

[2] P.L. 87-528, 76 Stat. 143. As a result of the decisions in *American Airlines* v. *Civil Aeronautics Board*, 235 F. 2d 845 (C.A.D.C.), certiorari denied, 353 U.S. 905, and *United Air Lines* v. *Civil Aeronautics Board*, 278 F. 2d 446 (C.A. D.C.), *vacated*, 364 U.S. 297, the statutory basis under then-existing law for continued operations by this class of carriers was placed in doubt and this led to enactment of P.L. 87-528.

On March 11, 1966, the Board adopted three sets of orders, involving the domestic and international phases of supplemental carrier operations, each of which concluded that inclusive tour charters were charter trips and that such services should be authorized (R. 332, 543, 1060).[3] The Board determined that it had statutory power to authorize inclusive tour charters because: (a) such charters fall within the generally accepted concept of charter operations, *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689 (D.N.J.), affirmed *per curiam*, 352 U.S. 1020; (b) Congress intended that the interpretation and application of the term "charter trips" used in the statute be left largely to the Board, *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349 (C.A. D.C.); and (c) such authorization would further the overall purpose of the 1962 amendments to the Federal Aviation Act, which was to strengthen "the economic outlook for the industry." [4] Since under Section 801, 49 U.S.C. 1461 (App. E, *infra*, p. 113), supplemental air transportation awards involving international routes must be approved by the President before publication, only that order of the Board dealing with domestic service was immediately subject to judicial review.

Respondents sought review of that order in the Court of Appeals for the District of Columbia, con-

---

[3] Two sets of orders were entered in the *Supplemental Air Service Proceeding* (Docket No. 13795) and the third was entered in the *Transatlantic Charter Investigation* (Docket No. 11908).

[4] H. Rep. No. 1177, 87th Cong., 1st Sess. 17.

tending that the inclusive tour charters were not "charter trips" and that the Board awards were therefore in excess of statutory power. The court rejected respondents' contention and affirmed the Board order, holding that the Board's interpretation of its statutory power "comports with the overall statutory intention of Congress." *American Airlines* v. *Civil Aeronautics Board*, 365 F. 2d 939, 944, 948 (C.A.D.C.).

A few months after the decision of the Court of Appeals for the District of Columbia, the awards for international inclusive-tour charters were approved by the President and released to the public. Abandoning the affirmative steps they had taken to seek review by this Court of the decision of the Court of Appeals for the District of Columbia sustaining the domestic order, respondents sought review of the international inclusive-tour authority in the court below. The court set aside the Board's orders, holding that "the term 'charter trips' was not intended to embrace the inclusive tour charters authorized by the Board's orders" [5] (App. A, *infra*, p. 24).

---

[5] Respondents also contended below that the orders were invalid by reason of certain procedural defects. The court did not reach these issues because of its determination that the award of inclusive tour authority was in any event beyond the Board's statutory power. The Board argued below and, if certiorari is granted, will argue here that consideration of these contentions is barred under the *Waterman Steamship* doctrine (*C. & S. Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103). Thus, we will urge that the proper disposition of this case, if this Court upholds the authority of the Board to award inclusive tour charters, would be to reverse and remand to the court of appeals with instructions to enter judgment affirming the orders under review.

REASONS FOR GRANTING THE WRIT

This case presents a direct conflict between the District of Columbia Circuit and the Second Circuit concerning the meaning and scope of a fundamental provision of the Federal Aviation Act. The issue which divides the courts is of continuing and major significance, for it involves determinations by the Board and the President as to the future place of supplemental air carriers in the nation's air-transportation system.

1. Unless the judgment below is reviewed by this Court, there will be left standing separate decisions of two circuits which cannot be reconciled. As formulated by the court below (App. A, *infra*, p. 24), "The question before us is whether the Board's statutory authority to issue certificates of public convenience and necessity for 'supplemental air transportation,' defined as 'charter trips in air transportation,' * * * includes the power to authorize inclusive tour charters." Upon the basis of the pertinent legislative history and judicial precedent, the District of Columbia Circuit answered the question in the affirmative. Invoking precisely the same legislative history and judicial precedent, the court below answered the same question in the negative. As matters presently stand, supplemental carriers may operate domestic inclusive tours, while the identical charters in overseas and foreign air transportation are unlawful.[6] In these circumstances, this Court

---

[6] It is of no moment that the awards sustained by the D.C. Circuit were for domestic operations, while those held unlawful below were for international operations. The statu-

should resolve the existing conflict so that the Act may be uniformly administered.

2. Moreover, the issue involved in this case is of such consequence that review by this Court would be warranted, even if there were not a conflict in the circuits. Congress has recognized that the supplemental air carrier industry is a "significant and valuable part of the Nation's air transportation system." [7] The "basic purpose" of the consolidated cases which culminated in the awards challenged below was to make a "comprehensive and cohesive" determination as to the appropriate place of supplemental carriers in that system (R. 54). Many factors of national importance entered into the Board's decision, including the potentially favorable effect which the operations authorized would have on the balance of payments deficit problem (R. 549-553), and the importance of strengthening the economic position of the supplemental carriers in order to enable them to maintain and increase their already recognized value as a national defense asset (R. 72-84). Moreover, since the Board's decision required Presidential approval, the challenged awards reflect the President's determination as to the appropriate role of the supplemental

---

tory definition of "supplemental air transportation," *i.e.*, "charter trips in air transportation," is the same for interstate, overseas, and foreign operations since "air transportation" by definition embraces all three without distinction (Section 101(10), 49 U.S.C. 1301(10), App. E, *infra*, p. 111).

[7] S. Rep. No. 1567, 86th Cong., 2d Sess., p. 5. See also, H. Rep. No. 1177, 87th Cong., 1st Sess., p. 16.

industry in international air transportation. We submit that a decision of a court of appeals which strikes down a program of such significance merits review by this Court.[8]

3. A careful analysis of the legislative history of the statute supports the conclusion that the Board is empowered to authorize the supplemental carriers to engage in inclusive tour operations. The Senate Committee specifically stated that inclusive tour charters of the sort authorized by the Board "conform to the traditional concept of charter" [9] because "this is a very different sort of service from individually ticketed transportation" (S. Rep. No. 688, 87th Cong., 1st Sess., pp. 13-14), and the Senate version of the legislation expressly embodied the inclusive tour charter concept into a statutory definition of "charter service." The House Committee, on the other hand, took the view that "authority to define charter services

---

[8] Contrary to various statements in the opinion below (App. A, *infra*, pp. 20-22), the Board did not and does not claim that *C. & S. Airlines* v. *Waterman S.S. Corp.*, 333 U.S. 103, precludes review of Presidentially approved orders authorizing U. S. carriers to engage in international air transportation so long as review is confined to the issue of statutory power to make the award. As noted above, see note 5, *supra*, the Board contended only that allegations concerning procedural defects in the proceeding were not subject to judicial review.

[9] It should be noted that the term "charter" in the Motor Carriers Act has been held to include such tours. *Tauck Tours, Inc., Extension—New York*, 50 MCC 373, affirmed, *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689 (D.N.J.), affirmed *per curiam*, 352 U.S. 1020.

should be left, as at present, with the Board" because "this is a very difficult subject and any effort to freeze a definition of charter service into law could well lead into complications" (H. Rep. No. 1177, 87th Cong., 1st Sess., p. 11). For this reason the House version contained no definition of "charter trip" and it was this version which was ultimately enacted. These reports indicate, as the District of Columbia Circuit said, that Congress intended "that the Board should be free to evolve a definition" of charter service in accordance with the needs of the air transportation system, so long as it preserved "the distinction between group and individually ticketed travel" (365 F. 2d at p. 949).

In reaching the opposite conclusion, the court below relied on various statements made by members of the conference committee during the debates which followed the Senate-House conference. In light of the fact that neither of the original Senate or House bills would have precluded the Board from authorizing inclusive tours as a part of charter service, we believe the court below was in error in giving controlling weight to the remarks of a few Senators and Congressmen.[10]

---

[10] Of the statements relied on by the Court below only those of Senators Scott and Cotton conclusively support the proposition that the Board was not to have authority to authorize inclusive tours. The other statements are consistent with the view that there should be no fixed definition of "charter trips" so that the Board would "be in a position to deal effectively with any efforts to abuse the meaning of charter" (App. B, *infra*, p. 31) and could insure that the charter concept would not be employed as a subterfuge for performance of individually ticketed point-to-point transportation. (App. B, *infra*, p. 32).

Certainly, the legislative history does not so clearly compel a contrary result as to justify the court below in abandoning the normal rule that the construction of a statutory term by those charged with the administration of a statute, if reasonable, is entitled to judicial respect even though another construction might also be reasonable. See *Udall* v. *Tallman*, 380 U.S. 1, 16; *National Labor Relations Board* v. *Coca-Cola Bot. Co.*, 350 U.S. 264.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DONALD F. TURNER,
Assistant Attorney General.

GREGORY B. HOVENDON,
ROBERT ELIOT EASTON,
Attorneys.

JOSEPH B. GOLDMAN,
General Counsel,

O. D. OZMENT,
Deputy General Counsel,

WARREN L. SHARFMAN,
Associate General Counsel,
Litigation & Legislation,

ROBERT L. TOOMEY,
Attorney,
Civil Aeronautics Board.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 510-11—September Term, 1966.

(Argued June 15, 1967 Decided July 20, 1967.)

Docket Nos. 30947-30948

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, RESPONDENT
WORLD AIRWAYS, INC., ET AL., INTERVENORS

Before:

HAYS and FEINBERG, *Circuit Judges*,
and MCLEAN, *District Judge.**

Petition to review orders of the Civil Aeronautics Board awarding certain supplemental air carriers certificates which authorize them, *inter alia*, to operate so-called "inclusive tours" between points in the United States and various foreign points.

Orders set aside to the extent that they authorize "inclusive tours." Case remanded for further proceedings not inconsistent with this opinion.

---

* Of the Southern District of New York, sitting by designation.

EDWARD R. NEAHER, New York, New York (Carl S. Rowe, Gertrude S. Rosenthal and Chadbourne, Parke, Whiteside & Wolff, on the brief), *for Petitioners.*

WARREN L. SHARFMAN, Associate General Counsel, Litigation and Legislation, Civil Aeronautics Board (Donald F. Turner, Assistant Attorney General, Joseph B. Goldman, General Counsel, Civil Aeronautics Board, O. D. Ozment, Deputy General Counsel, Civil Aeronautics Board, Robert L. Toomey, Attorney, Civil Aeronautics Board and Howard E. Shapiro, Attorney, Department of Justice, on the brief), *for Respondent.*

CHARLES A. HOBBS, Washington, D.C. (Glen A. Wilkinson, Paul S. Quinn and Wilkinson, Cragun & Barker, on the brief), *for Intervenor American Society of Travel Agents, Inc.*

CLAYTON L. BURWELL, Washington, D. C., Counsel for Trans International Airlines, Inc., and RAYMOND J. RASENBERGER, Washington, D. C., Counsel for Purdue Aeronautics Corp., and World Airways Inc. (Stephen D. Potts, Washington, D. C., Counsel for American Flyers Airlines, Inc., George Berkowitz, New York, New York, Counsel for Capitol Airways, Inc., and Leonard N. Bebchick, Washington, D. C., Counsel for Saturn Airways, Inc., on the brief), *for the Intervenor Supplemental Air Carriers.*

HAYS, *Circuit Judge*:

This is a petition to review five orders of the Civil Aeronautics Board awarding certain supplemental air carriers, intervenors in this action, certificates which

authorize them to operate so-called "inclusive tours" [1] between points in the United States and various foreign points. Petitioners' principal contention is that the Board lacked the power to authorize inclusive tours. The jurisdiction of this court is invoked under Section 1006 of the Federal Aviation Act of 1958, 49 U. S. C. § 1486. We hold that the Board lacked the power to authorize "inclusive tours" and that the challenged provisions should be stricken from the certificates awarded to the intervening carriers.

I.

Petitioners are three air carriers holding certificates of public convenience and necessity issued by the Civil Aeronautics Board under Section 401(d)(1) of the Federal Aviation Act, 49 U. S. C. § 1371(d)(1), authorizing them to engage in air transportation between the United States and various points abroad. Each of the intervenors, with the exception of the American Society of Travel Agents, Inc., is a supplemental air carrier [2] defined under Section 101(32)

---

[1] The term "inclusive tour" is, generally speaking, synonymous with the more familiar "all expense" or "package" tour. Such a tour includes various land arrangements, for example, hotel accomodations, meals and sightseeing, as well as air transportation. "Inclusive tour charters" are arrangements by which the air carrier charters a plane to a "tour operator" or travel agent who sells the entire package to the public for a single price per person. In this opinion we adopt this terminology which was used by the Board although not by the hearing examiner.

[2] At earlier stages of their development these carriers were known variously as "non-scheduled" or "large irregular" air carriers. Their history has been marked by frequent controversy and litigation. See, e.g., *Great Lakes Airlines, Inc.* v. *Civil Aeronautics Board*, 294 F. 2d 217, 221, n. 6 and cases there cited (D. C. Cir.), cert. denied, 366 U. S. 965 (1961).

of the Act, 49 U. S. C. § 1301(32), as "an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation." As the name implies, the services of supplemental air carriers are intended to supplement those of the scheduled carriers. See Section 101(33) of the Act, 49 U. S. C. § 1301(33).

In July 1962, Congress enacted Public Law 87-528, 76 Stat. 143, amending the Federal Aviation Act of 1958. The amendment established a comprehensive system for the certification and regulation of supplemental air carriers. In particular, it empowered the Civil Aeronautics Board to grant certificates of public convenience and necessity authorizing these carriers to engage in "supplemental air transportation." Section 401(d)(3), 49 U. S. C. § 1371(d)(3).[3] "Supplemental air transportation" was defined as "charter trips in air transportation . . . to supplement the scheduled service" which regular route carriers such as

---

[3] § 1371. *Certificate of public convenience and necessity*

(d) *Issuance*

* * * *

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this chapter.

petitioners are authorized to provide. Section 101 (33), 49 U. S. C. § 1301(33).

On March 11, 1966 the Board handed down opinions and orders in proceedings known as the *Supplemental Air Service Proceeding* and the *Reopened Transatlantic Charter Investigation*.

One of the orders, issued in the *Supplemental Air Service Proceeding*, Docket No. 13795, approved the certification of certain supplemental air carriers in the domestic area and authorized them to operate inclusive tour charters. CAB Order No. E-23350 (March 11, 1966). Other orders issued under the same name and docket number, (1) approved the certification of certain supplemental carriers to operate in various overseas and foreign areas[4] and au-

---

[4] Section 101(21) of the Act, 49 U.S.C. § 1301(21) provides:

"Interstate air transportation," "overseas air transportation," and "foreign air transportation," respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possesion of the United States, and a place in any other Territory or possesion of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

thorized them to operate inclusive tours (CAB Order No. E-24237 (March 11, 1966)), and (2) adopted proposed regulations defining various terms and setting out the scope of the carriers' inclusive tour authorization (CAB Order No. E-24238 (March 11, 1966)).

Two other orders were issued the same day under the title *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase), Docket No. 11908. Under the first of these orders, the right to operate inclusive tours was added to the certificates previously granted to Capitol Airways and Saturn Airways authorizing them to engage in supplemental air transportation in the tranatlantic area. CAB Order No. E-24240 (March 11, 1966). The second order adopted for the authorized transatlantic supplemental carriers the regulations referred to above. CAB Order No. E-24241 (March 11, 1966).

Under the statute the orders concerned with foreign air transportation entered in the *Reopened Transatlantic* and *Supplemental Air Service* cases were subject to the President's approval. See Section 801 of the Act, 49 U. S. C. § 1461.[5] Those are the

---

[5] § 1461. *The President of the United States*

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

orders now before us for review. No presidential approval was required for the domestic orders entered in the *Supplemental Air Service Proceeding*. They immediately became final and subject to judicial review. The petitioners in the instant case were among the parties who sought judicial review of the Board's domestic orders in the Court of Appeals for the District of Columbia Circuit, contending primarily that the Board exceeded its statutory powers in granting supplemental carriers inclusive tour authority. That court had previously decided the "split charter" [6] case, *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (D. C. Cir. 1965), in which it had said:

> "Congress intended, although not without limits, that the Board should be free to evolve a definition [of 'charter trips,' 49 U. S. C. §§ 1301 (33)] in relation to such variable factors as changing needs and changing aircraft. . . ." 348 F. 2d at 354.

Relying in part on the quoted statement and in part on its own analysis of the relevant legislative history, the court rejected the contention that Congress had not empowered the Board to authorize inclusive tours. *American Airlines* v. *Civil Aeronautics Board*, 365 F. 2d 939 (D. C. Cir. 1966).

Thereafter, on September 27, 1966, the orders concerning foreign air transportation were approved by the President. Petitioners now seek review of the orders in this court contending that the Board exceeded

---

[6] A split charter "is simply the process of chartering one half of an aircraft to each of two unrelated charter groups." *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354 (D.C. Cir. 1965).

its statutory powers in granting inclusive tour authority to supplemental air carriers. They also urge that the Board erred in denying them a hearing before it granted inclusive tour authority to the supplemental carriers involved in the *Reopened Transatlantic Charter Investigation* and that the orders are unlawful under the statute since they were approved by only two members of the five man Board, one member dissenting and two not participating.

In view of our decision that the grant of authority for inclusive tours was beyond the Board's power, we find it unnecessary to reach the other points raised by petitioners.

The Board contests petitioners' claims on the merits. It also argues that its power with respect to the orders in question was conclusively determined in the prior action involving these petitioners, *American Airlines* v. *Civil Aeronautics Board*, *supra*, 365 F. 2d 939, and that the doctrine of *res judicata* precludes relitigation of this issue.

II.

The Board has moved that the appeal be dismissed or transferred to the Court of Appeals for the District of Columbia Circuit. It is conceded that our court has jurisdiction of the petition and that venue is proper under Section 1006 of the Act, 49 U. S. C. § 1486. However, the Board argues that petitioners are guilty of forum-shopping, seeking a determination from this court contrary to that reached by the District of Columbia Circuit, thus enhancing their opportunity for review in the Supreme Court of the legal issues here tendered. We are urged to transfer the appeal, either under the provisions of 28 U. S. C.

§ 2112,[7] or in the exercise of our inherent discretionary power.

Section 2112 authorizes transfer only where "proceedings have been instituted in two or more courts of appeals with respect to the same order." It is clear that the orders before us are not the same as those reviewed by the Court of Appeals for the District of Columbia Circuit. See *Far East Conference* v. *Federal Maritime Comm'n*, 337 F. 2d 146, 148 n. 1 (D. C. Cir. 1964), cert. denied, 379 U. S. 991 (1965).

Even assuming that this court has inherent discretionary power to transfer a case to another court of appeals in the interests of orderly judicial administration (but see *Gulf Oil Corp.* v. *Federal Power Comm'n*, 330 F. 2d 824 (5th Cir. 1964)), we find nothing in the decided cases that would justify us in trans-

---

[7] § 2112. Record on review and enforcement of agency orders.

(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record . . . . If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

ferring this case to the District of Columbia Circuit. We have jurisdiction of the action and, since petitioners' principal place of business is in the Second Circuit, venue is properly laid. Cf. *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 343 F. 2d 905 (8th Cir. 1965); *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 337 F. 2d 249 (10th Cir. 1964). Reaching the merits in this case will not require us to construe a prior order of another circuit (cf. *Pacific Gas & Electric Co.* v. *Federal Power Comm'n*, 272 F. 2d 510 (D. C. Cir. 1958) (accepting transfer from 9th Circuit)) and we are not presented with the very unusual circumstances thought by the court to justify transfer in *Eastern Air Lines* v. *Civil Aeronautics Board*, 354 F. 2d 507 (D. C. Cir. 1965). In the absence of any showing of inconvenience to respondent, we are not convinced that there are any interests of sound judicial administation which suggest that this case should be transferred. We can perceive no reason for treating this case as an exception to the principle affording a litigant wide latitude in his selection of a forum where Congress has given him a choice.

III.

The Board's motion to dismiss is based on its contention that the doctrine of *Chicago & S. Air Lines* v. *Waterman S. S. Co.*, 333 U. S. 103 (1948), precludes review of the Board's challenged orders and that, in any event, principles of *res judicata* prevent petitioners from relitigating the issues. We hold that neither the *Waterman* doctrine nor principles of *res judicata* bar us from deciding the merits of petitioners' claim.

In the *Waterman* case petitioner sought to invalidate a Board order awarding route authority for overseas and foreign air transportation. In accord-

ance with Section 801 of the statute, 49 U. S. C. § 1461 (reprinted in footnote 5 *supra*), the order had been submitted to the President and had been approved by him. Petitioner did not challenge the regularity of the Board's proceedings and apparently raised no issue as to the Board's statutory authority; instead it attacked the correctness of the Board's findings and the adequacy of the evidence supporting them. The Supreme Court held that:

> "[O]rders of the Board as to certificates for overseas or foreign air transportation are not mature and are therefore not susceptible of judicial review at any time before they are finalized by Presidential approval. After such approval has been given, the final orders embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate." 333 U. S. at 114.

We need not decide whether, as has been argued, the *Waterman* decision rests on a misinterpretation of Section 1006 of the Act, 49 U. S. C. § 1486 providing for judicial review of the Board's orders. See Miller, the *Waterman* Doctrine Revisited, 54 Geo. L. J. 5, 6-9 (1965). We agree with the Court of Appeals for the District of Columbia Circuit that the *Waterman* case does not "govern a situation where the action of the Board, before the matter reaches the President, is beyond the Board's power to act." *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d at 352. As the court there stated:

> "Clearly, *Waterman* presupposes lawfully exercised congressional authority in the Board's action, in the first instance, as an indispensable predicate, without which there is nothing Presi-

dential action can approve." *Ibid.; cf. id.* at 354-55 (concurring opinion); see generally, Miller, *op. cit. supra.*

Waterman, therefore, presents no obstacle to the attack on the Board's orders in this case.

We also reject the Board's contention that the doctrine of *res judicata* bars further litigation of the issues now before us.

The principles to be applied were summarized by the Supreme Court in *Commissioner* v. *Sunnen*, 333 U. S. 591 (1948):

> "[I]f the very same facts and no others are involved in the second case . . . the prior judgment will be conclusive as to the same legal issues which appear, assuming no intervening doctrinal change. But if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case." 333 U. S. at 601 (footnote omitted); see *Consolidated Edison Co.* v. *United States*, 279 F. 2d 152, 154 (2d Cir. 1960), aff'd 366 U. S. 380 (1961); cf. *Federal Power Comm'n* v. *Amerada Petroleum Corp.*, 379 U. S. 687, 690 (1965); *United States* v. *Stone & Downer Co.*, 274 U. S. 225 (1927); *Grandview Dairy* v. *Jones*, 157 F. 2d 5, 9, 10 (2d Cir.), cert. denied, 329 U. S. 787 (1946); see generally Developments in the Law —*Res Judicata*, 65 Harv. L. Rev. 818, 843-44 (1952).

More recently, in *Yates* v. *United States*, 354 U. S. 298 (1957), the Court said that the

> "doctrine makes conclusive in subsequent proceedings only determinations of fact, and mixed

fact and law, that were essential to the decision. *Commissioner* v. *Sunnen*, 333 U. S. 591, 601-602; *Tait* v. *Western Maryland R. Co.*, 289 U. S. 620 [1933]; *The Evergreens* v. *Nunan*, 141 F. 2d 927, 928 [(2d Cir.), cert. denied, 323 U. S. 720 (1944)]." 354 U. S. at 336; see Restatement, Judgments § 70, comment e.

The operative facts in this case, involving overseas and international air transportation, are different from those before the District of Columbia Circuit in the domestic charter case. Separate exhibits relating to each area were admitted in the proceedings before the Board. In their opinions the Board and examiner considered each area separately, noting, for example, the different amounts of charter traffic involved and the different consequences, in terms of potential diversion of passengers from the regularly scheduled carriers, that inclusive tours would have in each market. The orders here challenged became final at a different time and are clearly distinguishable from those involved in the domestic charter litigation.

None of the cases cited by the Board supports the conclusion that principles of *res judicata* preclude litigation of the question of law here involved. For example, the "order" challenged in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 257 F. 2d 926 (3d Cir. 1958) was merely a phase of the order which had been previously upheld by this court in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 247 F. 2d 646 (2d Cir. 1957), cert. denied, 355 U. S. 912 (1958). Petitioner was thus properly precluded from relitigating the issue. *Bartsch* v. *Washington Metropolitan Area Transit Comm'n*, 357 F. 2d 923 (4th Cir. 1966) is distinguishable on similar grounds.

This court has said that "the law of collateral estoppel is 'growing law.'" *United States* v. *Russell*

Mfg. Co., 349 F. 2d 13, 18-19 (2d Cir. 1965); see also *B. R. DeWitt, Inc.* v. *Hall*, 19 N. Y. 2d 141, 278 N. Y. S. 2d 596 (1967). Nevertheless judicial aversion to forum shopping is not a sufficient ground for precluding litigation of a question of law by extending the doctrine of *res judicata* into areas traditionally governed by "the ordinary rule of stare decisis." *Commissioner* v. *Sunnen, supra*, 333 U. S. at 601; cf. *Island Airlines, Inc.* v. *Civil Aeronautics Board*, 363 F. 2d 120, 123 (9th Cir. 1966). We therefore consider ourselves free "to make an independent examination of the legal matters at issue." *Commissioner* v. *Sunnen, supra*, 333 U. S. at 601.

IV.

The question before us is whether the Board's statutory authority to issue certificates of public convenience and necessity for "supplemental air transportation," defined as "charter trips in air transportation," (Section 101(33) of the Act, 49 U. S. C. § 1301(33)) includes the power to authorize inclusive tour charters.[8] Consideration of the legislative history of the Act leads us to the conclusion that the term "charter trips" was not intended to embrace the inclusive tour charters authorized by the Board's orders.

The provisions in question were added to the Federal Aviation Act by Public Law 87-528. As we have

[8] The question presented is not whether Congress withdrew from the Board a pre-existing power to grant inclusive tour authority. "[P]rior to 1962 the Board had never authorized inclusive tour authority for the supplementals." *American Airlines* v. *Civil Aeronautics Board, supra*, 365 F. 2d at 946. See also Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 111 (1961).

pointed out this amendatory legislation established a comprehensive system for the certification and regulation of supplemental air carriers. Its principal purposes were to clarify the permissible field of operations of the supplemental carriers,[9] to assure their economic viability, to eliminate marginal and unsafe operators and "to maintain the regulatory scheme of the Federal Aviation Act and the protection of the certificated carriers such as petitioners by eliminating unregulated individually ticketed point-to-point competition from the supplementals." *American Airlines, Inc.* v. *Civil Aeronautics Board, supra,* 365 F. 2d at 944-45; see authorities cited *id.*, at n. 8.

The bill which evolved into Public Law 87-528 was prepared by the Board and introduced in both houses of Congress early in the 87th Congress. See S. 1969, 87th Cong., 1st Sess. (1961); H. R. 7318 87th Cong., 1st Sess. (1961). Also introduced in the House was a bill proposed by the supplemental air carriers, H. R. 7512, 87th Cong., 1st Sess. (1961).

The definition of "supplemental air transportation" found in the Board's bill [10] would have permitted the

---

[9] The statute was in part a response to the decisions in *United Air Lines* v. *Civil Aeronautics Board,* 278 F. 2d 446 (D.C. Cir.), vacated, 364 U.S. 297 (1960) and *American Airlines* v. *Civil Aeronautics Board,* 235 F. 2d 845 (D.C. Cir. 1956), cert. denied, 353 U.S. 905 (1957), which the Board thought had placed in doubt the statutory basis for the continued operation of supplemental carriers under existing law. See Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 5, 281-83 (1961); Hearings Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess. 10, 13, 29 (1961).

[10] The Board's bill provided:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity

Board to certify supplemental air carriers to perform a broad range of services including not only existing charter services but also the limited individually ticketed transportation for the general public that was then permitted under temporary legislation passed by Congress. See Public Law 86-661, 74 Stat. 527 (1960); H. R. 7318, Section 2, 87th Cong., 1st Sess. (1961); see also Public Law 87-528, Section 7, reprinted after 49 USC § 1371. The definition contained in the bill proposed by the supplemental carriers went even further. It would have authorized "unlimited charter operations on a planeload basis for the carriage of passengers and property . . . with the word 'charter' herein being defined as air transportation performed pursuant to an agreement for the use of the entire capacity of an aircraft . . . ." H. R. 7512, 87th Cong., 1st Sess. (1961). It also would have permitted "individually ticketed passenger . . . operations . . . in interstate, overseas and territorial air transportation." *Ibid.*

Hearings at which representatives of the Board, the scheduled aircarriers and the supplementals all testified were held in June, 1961, before the Aviation Subcommittee of the Senate Committee on Commerce and before a Subcommittee of the House Committee on Interstate and Foreign Commerce. At the hear-

---

authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

ings the Board made clear its opposition to any arrangement that would permit travel agents to solicit the general public in forming charter groups. See, e.g., Senate Hearings, *supra* n. 9, at 29.

Following the hearings each committee reported out its own bill. Under the Senate Bill the Board was expressly empowered to authorize supplemental carriers to operate inclusive tours.[11] With the express exception of the "all expense-paid tour," the Senate bill was intended to prevent the Board from authorizing "individually ticketed service whether offered by an air carrier directly or by a travel agent." S. Rep. No. 688, 87th Cong., 1st Sess, 13-14 (1961). However it did not, as the Board contends, require that supplementals be certificated to operate inclusive tours. Its language was merely permissive, authorizing the Board to grant such authority when required by the public need and consistent with the capability and interests of the particular carrier. "[T]he bill does not require the Board to grant every supplemental carrier any particular charter authority." See S. Rep. No. 688, 87th Cong., 1st Sess. 12-13 (1961).

The bill passed the Senate on August 28, 1961.

---

[11] The bill defined "charter service" to mean:

> "air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour."

The bill reported out by the House Committee, like the Senate bill, worked substantial changes in the legislation drafted by the Board. However, unlike the Senate bill, the House version did not define the term charter although that term is found in the bill's definition of supplemental air transportation.[12] The definition of "supplemental air transportation" included in the House bill was ultimately enacted by Congress as part of Public Law 87-528. See 49 U. S. C. § 1301(33).

Of particular importance in deciding what was the intended scope of the Board's powers under this bill which was passed by the House on September 18, 1961, is the statement of the House Committee that its bill "would give the Board some, but not all, of the authority requested by it. The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate supplemental carriers, especially, in the field of individually ticketed operations." H. R. Rep. No. 1177, 87th Cong., 1st Sess. 6-7 (1961).

In deciding whether grant of inclusive tour authority violates the limitations of the statute it must be remembered "that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel." *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d at 354. See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1962).

---

[12] "(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

It is clear that the fact that the Board has the power to define "charter" to include split charters (see *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d 349), a device permitting the Masons and Elks each to charter one half of the capacity of an aircraft, does not mean that the Board is free to adopt a definition that contravenes basic policies laid down in the Act. To permit the selling of individual tickets to the general public in direct competition with the regularly scheduled airlines, regardless of whether such selling is done through the medium of a travel agent who has first "chartered" the plane, does violate basic policies of the Act. Any lingering ambiguities clouding this issue are dispelled by the subsequent history of the House and Senate bills, to which we now turn.

The conflicting House and Senate bills were submitted to a Conference Committee which reported out a substitute bill that was ultimately enacted as Public Law 87-528. The substitute followed the House version, eliminating the definition of the term "charter" found in the Senate bill. It is clear from the conference report that one purpose of the Committee in adopting the provisions of the House bill was to prohibit "individually ticketed and waybilled services on a permanent basis." [13] See Conference Report, H. R.

[13] The statute as enacted permits only two exceptions to the general rule forbidding supplemental carriers to provide individually ticketed services. The first exception, Section 9 of Public Law 87-528 provided a two year period, now expired, during which the Board could authorize such services in order "to permit an orderly transition to an all-charter operation." Reprinted following 49 U.S.C. § 1371; See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 7, 14 (1962). The second authorizes the Board to issue a "special operating authorization" for a period of 30 days subject to renewal for a maximum of 60 additional days. Such authorization, enabling

Rep. No. 1950, 87th Cong., 2d Sess. 14 (1962).

Even more direct and more persuasive evidence is available concerning the intention of the conferees in striking from the bill the provision that would have permitted all expense package tours. Several of the bill's floor managers addressed themselves to this subject during the debate on the bill in their respective houses. They were unanimous in declaring that the "all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in [the House's] position on that." 108 Cong. Rec. 12322 (June 29, 1962) (remarks of Rep. Williams); see remarks of Rep. Walter, *ibid.* Their statements as to this limitation on the Board's authority went unchallenged.

For example, Senator Scott stated:

> "The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' Such a group could have been assembled from the general public . . . .
>
> The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air

---

a supplemental carrier to engage in individually ticketed operations, could be issued only on a showing that "the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service," or that there is a temporary requirement for such service between two points not regularly served by a scheduled carrier. Section 417 of the Act, 49 U.S.C. § 1387; see Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 4 (1962); H. R. Rep. No. 1177, 87th Cong., 1st Sess. 2, 12-13 (1961).

transportation. There should be no question about that, The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation." 108 Cong. Rec. 12284-85 (June 29, 1962).

Senator Thurmond stated:

"I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision." 108 Cong. Rec. 12285 (June 29, 1962).

In the House, Representative Harris, Chairman of the House Interstate Commerce Commission, made clear that while "the Senate proposed to change the well established meaning of 'charter,' " the House objected to the change.

"A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for a particular purpose by a single engaging party. Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language. As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter." 108 Cong. Rec. 12322 (June 29, 1962).

He went on to read a statement, identical to one submitted later by Representative Collier:

"The bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the bill, as passed by the House, contained no definition of charter.

The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter of 'a group on an all-expense paid tour.' The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the

remainder of the Senate definition was superfluous since it merely stated established law and policy." 108 Cong. Rec. 12322 (June 29, 1962); see *id.* at 12324 (remarks of Rep. Collier).

Senator Cotton said:

> "The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on charter flights to individual members of the general public who were on all-expense-paid tours. I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board." 108 Cong. Rec. 12284 (June 29, 1962).

These statements are specific in rejecting the notion that the term charter can be construed to include all expense tours. We therefore reject the argument that the legislators' concern was with abuses growing out of the Board's prior practice of allowing supplemental carriers to perform limited scheduled individually ticketed travel. Regardless of the extent to which there may have been legislative concern based on this prior experience, indeed whether or not the expression of concern was misguided or wholly unwarranted, it was in fact manifested in a congressional declaration binding on both the Board and this court, that was clearly intended to forbid the Board to authorize inclusive tours.

The Board also argues that many of the statements made on the floor of Congress were directed against split charters as such, and that the Board's power to authorize such charters has nevertheless been upheld. See *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d 349. While we have no occasion to pass on the question of the propriety of split charters

we note that Congressional concern with their potential impact is much less clear from the Committee reports and hearings than is the intention to prohibit individually ticketed operations in whatever guise, by supplemental carriers. Moreover, the legislative history involved in the inclusive tour question, with one house passing legislation that would have specifically empowered the Board to authorize package tours only to have the provision deleted by the Conference Committee with the floor managers unanimous in their explanations of the change, is not repeated in the case of split charters. See, e.g., 108 Cong. Rec. 12283 (June 29, 1962) (remarks of Sen. Monroney). On the contrary, the provision deleted from the Senate bill would in fact have forbidden split charters. See Section 101(13) of the bill, S. Rep. No. 688, 87th Cong., 1st Sess. 13, 22 (1961) (reprinted n. 11 *supra*).

But the Board urges that in construing the statute we should not give any weight to statements made in floor debate. In determining whether it had the power to authorize inclusive tours, the Board, finding the statute and committee reports clear, declared that there was "no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers." Board Order E-23350 (March 11, 1966).

We do not agree. That Congress adopted the House version of the bill, specifically rejecting the Senate's conflicting version, is of course an extremely significant factor in determining what was Congress' intention with respect to the matters in issue. See, e.g., *First Nat'l Bank* v. *Walker Bank*, 385 U. S. 252, 258 (1966). It would be foolish, indeed, to disregard the one source of legislative history that explains the reasons for the conference committee's action.

Nor are we here concerned with general remarks made in debate which contradict either the face of the statute or statements in committee reports. On the contrary, we have before us on the one hand a statute that is not clear on its face and committee reports that seem to support petitioners' view although they can perhaps be deemed ambiguous. On the other hand we have statements made by the floor managers that fully explain the changes in the bill. These floor managers were members of the legislative committees that held extensive hearings and were responsible for formulating the legislation.[14]

Only recently, in circumstances similar to those in the instant case, a unanimous Supreme Court relied on statements made in debate, not only by a sponsor of legislation and by a member of the Conference Committee but also by other members of Congress, and regarded such statements as authoritative indicators of congressional intent. *First Nat'l Bank* v. *Walker Bank, supra,* 385 U. S. at 258-60; see also *Brown Shoe Co.* v. *United States,* 370 U. S. 294, 311-23 (1962).

The authorities cited by the Board do not support the view that we may disregard or give little or no weight to statements made on the floor of Congress under the circumstances of this case. In *United States* v. *International United Automobile Workers (UAW-CIO),* 352 U. S. 567 (1957) although the Court did say that debate is not entitled to the same

---

[14] For example, Representative Harris was the Chairman of the House Committee on Interstate and Foreign Commerce, Representative Williams was Chairman of the Subcommittee on Transportation and Aeronautics of which Representative Collier was a member, Senator Monroney was chairman of the Subcommittee on Aviation, Senators Thurmond, Cotton, Morton and Scott were on that committee.

weight "as carefully considered committee reports," it still examined the debate, finding that it confirmed what was contained in the reports. 352 U. S. at 586-87 & n. 1. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 474-75 (1921) exhibits a similar treatment of Congressional debate. *Nicholas* v. *Denver & Rio Grande W. R. R.*, 195 F. 2d 428, 431-32 (10th Cir. 1952), whatever dictum the opinion may contain to the contrary, fully supports the position that we take here.

If, as we hold, Congress did not give the Board power to authorize inclusive tours, it is immaterial whether, as the Board contends, the proposed regulations will be effective in curbing abuses of the inclusive tour certificates.

Since the Motor Carrier Act is quite different from the Federal Aviation Act in language, statutory structure and legislative history, the fact that all expense tours have been approved under the Motor Carrier Act (see *National Bus Traffic Ass'n* v. *United States*, 143 F. Supp. 689 (D. N. J. 1956), aff'd *per curiam*, 352 U. S. 1020 (1957)), is not at all persuasive in construing Public Law 87-528, even if we assume that the tours there authorized are similar to those approved by the Board in this case, an assumption that petitioners vigorously contest.

We hold that the certificates before us awarding inclusive tour authority to supplemental air carriers in foreign and overseas transportation are invalid.

Since our conclusion that the Board acted in excess of its statutory powers is dispositive of the case, we need not pass on the other points raised by petitioners.

The orders are set aside and the case remanded to the Board for further proceedings not inconsistent with this opinion.

APPENDIX B

Order No. E-24240

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL EXPENSE TOUR PHASE)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That amended certificates of public convenience and necessity for transatlantic supplemental air transportation in the forms attached hereto be issued to Capitol Airways, Inc., and Saturn Airways, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That inclusive tour charter authority be awarded to any supplemental air carrier hereafter certificated in the *Reopened Transatlantic Charter Investigation*, Docket 11908 *et al.*, such authority to terminate on April 18, 1969.

4. That this order shall be effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON
September 27, 1966

Issued pursuant to
Order No. E-24240

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred,

directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms,

conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideraton of the Board's order of March 11, 1966 (Order E-24240), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24240.

[The certificate issued to Saturn Airways, Inc., which is identical to the above has been omitted]

Order No. E-24241

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 295 and 378 of the Board's Regulations, which are attached hereto and made a part hereof.[1]

2. That said amendments shall be effective on November 26, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

---

[1] For administrative convenience we have combined into a single amendment to Part 378 the revisions required by the decision in the instant proceeding as well as the decision in the foreign phase of the *Supplemental Air Service Proceeding*, Docket 13795 *et al.*

Regulation No. ER-475

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations Amendment No. 7 to Part 295
Effective: November 26, 1966
Adopted: March 11, 1966

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION REDEFINITION OF "CHARTER FLIGHT" TO INCLUDE INCLUSIVE TOUR CHARTERS

The Board has determined in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et al.*, to grant inclusive tour charter authority to Capitol Airways, Inc., Saturn Airways, Inc., and any supplemental air carrier subsequently certificated in the transatlantic market in that proceeding.[1] Such authority involves the charter of supplemental carrier aircraft to tour operators who in turn sell the inclusive tours to individual members of the general public.[2] It therefore becomes necessary to contemporaneously expand the definition of "charter flight," as contained in Part 295 of the Economic Regulations, to include inclusive tour charters.[3] In-

[1] Order E-24240.

[2] Part 378 of the Board's Special Regulations, which contains the regulatory provisions governing inclusive tour operations, is being amended concurrently herewith to cover transatlantic inclusive tours.

[3] In view of the extensive application and reporting requirements imposed by Part 378, the operation of inclusive tour charters is being exempted from the condition that a "Statement of Supporting Information" be executed prior to any supplemental air transportation performed pursuant to Part 295.

asmuch as the question of whether such charters should be authorized in the transatlantic market has been fully litigated in Docket 11908, *et al.*, we believe that further notice and public procedure on this amendment are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 295 of its Economic Regulations effective November 26, 1966, as follows:

1. By amending § 295.2(b) to read as follows:

§ 295.2 *Definitions.*

As used in this part, unless the context otherwise requires—

* * * * *

(b) "Charter flight" means air transportation performed by a direct air carrier on a time, mileage or trip basis where (1) the entire capacity of one or more aircraft has been engaged for the movement of persons and their personal baggage—

(i) By a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency);

(ii) By a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services); or

(iii) By a tour operator as defined by Part 378 of this chapter; or (2) one-half the capacity of an aircraft has been engaged by a person for his own use or by a representative or representatives of a group for the use of such group and the remaining half of

the capacity of such aircraft has been engaged by another person for his own use or by a representative or representatives of a second group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services).

With the consent of the charterer, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

2. By revising § 295.5(a) to read as follows:

§ 295.5 *Records and record retention.*

(a) Prior to performing any supplemental air transportation pursuant to this part, the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof: *Provided,* That this requirement shall not apply to inclusive tour charters.

(Section 204(a) of the Federal Aviation Act of 1958; 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply sections 401(d)(3), 401(n); 76 Stat. 143, 144; 49 U.S.C. 1371.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

NOTE: This is amendment No. 7 to Part 295 effective April 30, 1964.

Regulation No. SPR-16

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Special Regulations Amendment No. 2 to Part 378
Effective: November 26, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN AIR TRANSPORTATION

Part 378 of the Board's Special Regulations (14 CFR Part 378), which contains the regulatory provisions governing the operation of inclusive tour charters, was originally issued [1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to inclusive tours in interstate air transportation.

To correspond with authorizations being awarded as a result of the Board's final decisions in the foreign and overseas phase of the *Supplemental* case [3] and in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et al.*,[4] which

---

[1] Regulation No. SPR-14, adopted March 11, 1966, and published in 31 F.R. 4779.

[2] Order E-23350.

[3] Order E-24237.

[4] Order E-24240.

are being issued concurrently herewith, we are amending Part 378 to expand its coverage to inclusive tours in overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceedings, and because parties to the rule making were heretofore given the opportunity to comment on this matter [5], further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 378 of its Special Regulations effective November 26, 1966, as follows:

1. By revising § 378.1 to read as follows:

§ 378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall

[5] Part 378 as originally proposed pertained to interstate and *overseas* air transportation (Notice of Proposed Rule Making SPDR-6, January 5, 1965, 30 F.R. 281). Moreover, the proposed regulation was amended to cover *foreign* air transportation (Supplemental Notice of Proposed Rule Making, SPDR-6B, October 11, 1965, 30 F.R. 13077). Comments concerning both of these Notices were received, as set forth in SPR-14, *supra*, and have been considered by the Board.

be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

2. By revising § 378.2(a) to read as follows:

§ 378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended, (72 Stat. 737; 49 U.S.C. 1301; 72 Stat. 743; 49 U.S.C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U.S.C. 1371; 72 Stat. 768; 49 U.S.C. 1379; 72 Stat. 770; 49 U.S.C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U.S.C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 378 effective May 13, 1966.

Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Southern Air Transport, Inc., Trans International Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That all applications consolidated herein for supplemental certificates insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession heretofore filed by Conner Air Lines, Inc., Holiday Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc., be and they hereby are denied.

4. That, except to the extent otherwise indicated, all applications consolidated herein for supplemental certificates, insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession, heretofore filed by the carriers listed in paragraph 1 of this order be and they hereby are denied.

5. That this order shall be effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

September 27, 1966

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and
   (a) points in Canada and Mexico, on the other hand;
   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States,

pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on

which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966. in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transporta-

tion and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966

(Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

MODERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties

and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

JOHNSON FLYING SERVICE, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties

and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the Canadian Government such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

PURDUE AERONAUTICS CORPORATION

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties

and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the Canadian Government such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transporta-

tion and to the following additional terms, conditions and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes

the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SOUTHERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of com-

pensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and point in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

ZANTOP AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times con-

duct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Order No. E-24238

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 208 and 378 of the Board's Regulations, which are attached hereto and made a part hereof.[1]

2. That said amendments shall be effective on November 26, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

[1] For administrative convenience we have combined into a single amendment to Part 378 the revisions required by the decision in the instant proceeding as well as the decision in the *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase), Docket 11908 *et al.*

Regulation No. ER-474

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations Amendment No. 2 to Part 208
Effective: November 26, 1966
Adopted: March 11, 1966

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN CERTIFICATED SUPPLEMENTAL AIR TRANSPORTATION

Part 208 of the Board's Economic Regulations (14 CFR Part 208), which contains, *inter alia*, certain terms, conditions and limitations of interim certificates issued pursuant to section 7 of Public Law 87-528 and of certificates issued pursuant to section 401 (d) (3) of the Act, was revised and reissued [1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding*, Docket 13795 *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to authorizations to perform interstate air transportation.[3]

[1] Regulation ER-454, adopted on March 11, 1966, and published in 31 F.R. 4771.

[2] Order E-23350.

[3] Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

To correspond with authorizations being awarded as a result of the Board's final decision in the foreign and overseas phase of the *Supplemental* case,[4] which is being issued concurrently herewith, we are amending Part 208 to expand its coverage to certificated supplemental overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceeding, further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 208 of its Economic Regulations (14 CFR Part 208), effective November 26, 1966, as follows:

1. Amend the table of contents by adding § 208.32a and by revising § 208.33 to read as follows:

208.32a Flight delays and substitute air transportation (foreign).

208.33 Flight delays and substitute air transportation (interstate and overseas).

2. Amend § 208.3 by revising paragraphs (c) and (t) thereof to read as follows:

(c) "Supplemental air transportation" (other than operations subject to Part 295 of this subchapter) means charter flights in air transportation performed pursuant to (1) an interim certificate or authorization issued under section 7 of Public Law 87-528, or (2) a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supplemental air transportation of persons and property between any point

[4] Order E-24237.

in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia (exclusive of air transportation within the State of Alaska) or in foreign or overseas supplemental air transportation.

(t) "Substitute service" means the performance by an air carrier of foreign or overseas air transportation, or air transportation between the 48 contiguous states, on the one hand, and the state of Alaska or Hawaii, on the other hand, in planeload lots pursuant to an agreement with another air carrier to fulfill such other air carrier's contractual obligation to perform such air transportation for the Department of Defense and when the performance of such air transportation is not to take place during a period longer than three weeks.

3. Amend § 208.32(d) to read as follows:

§ 208.32 *Tariffs and terms of service.*

* * * *

(d) Each and every contract for a charter to be operated hereunder shall incorporate the provisions of §§ 208.10 through 208.15, inclusive, and 208.32a, 208.33 and 208.33a where applicable, concerning insurance and substitute transportation.

4. Add a new § 208.32a entitled "Flight delays and substitute air transportation (foreign)" to read as follows:

§ 208.32a *Flight delays and substitute air transportation (foreign).*

Supplemental air carriers shall assume, and publish as part of the rules and regulations of their tariffs applicable to passenger service in foreign air trans-

portation, the following obligations without prejudice, and in addition, to any other rights or remedies of passengers under applicable law:

(a) *Substitute air transportation.*

(1) On all charter flights, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this paragraph.

(2) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other carrier or foreign air carrier.

(3) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(4) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this paragraph, periods of delay caused by the prohibition of flights from the airport of departure because of weather or other opera-

tional conditions shall be excluded if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness posted at such airport.

(b) *Incidental expenses.*[5]

(1) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this paragraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares.

(2) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00 shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period of delay, or any fractional part thereof. If the delay continues beyond

[5] Although the requirements with respect to providing incidental expenses are made expressly applicable only to the return leg of a charter flight, the air carriers are expected, in the case of delay in departure of the originating leg of a flight, to furnish such incidental expenses to charter passengers whose homes are not located within a reasonable distance from the point of origination of the charter.

Regulation No. SPR-16

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Special Regulations Amendment No. 2 to Part 378
Effective: November 26, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN AIR TRANSPORTATION

Part 378 of the Board's Special Regulations (14 CFR Part 378), which contains the regulatory provisions governing the operation of inclusive tour charters, was originally issued [1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to inclusive tours in interstate air transportation.

To correspond with authorizations being awarded as a result of the Board's final decisions in the foreign and overseas phase of the *Supplemental* case [3] and in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et*

[1] Regulation No. SPR-14, adopted March 11, 1966, and published in 31 F.R. 4779.

[2] Order E-23350.

[3] Order E-24237.

al.,[4] which are being issued concurrently herewith, we are amending Part 378 to expand its coverage to inclusive tours in overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceedings, and because parties to the rule making were heretofore given the opportunity to comment on this matter[5], further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 378 of its Special Regulations effective November 26, 1966, as follows:

1. By revising § 378.1 to read as follows:

§ 378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions

---

[4] Order E-24240.

[5] Part 378 as originally proposed pertained to interstate and *overseas* air transportation (Notice of Proposed Rule Making SPDR-6, January 5, 1965, 30 F.R. 281). Moreover, the proposed regulation was amended to cover foreign air transportation (Supplemental Notice of Proposed Rule Making, SPDR-6B, October 11, 1965, 30 F.R. 13077). Comments concerning both of these Notices were received, as set forth in SPR-14, *supra*, and have been considered by the Board.

of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

2. By revising § 378.2(a) to read as follows:

§ 378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended, (72 Stat. 737; 49 U.S.C. 1301; 72 Stat. 743; 49 U.S.C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U.S.C. 1371; 72 Stat. 768; 49 U.S.C. 1379; 72 Stat. 770; 49 U.S.C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U.S.C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 378 effective May 13, 1966.

Order No. E-24239

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record and on the basis of the findings and conclusions set forth in the Board's decision of March 11, 1966, Order E-23350, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the interim certificates and interim authority for supplemental air service, to the extent not previously ordered terminated by Order E-23350, March 11, 1966, shall terminate with respect to each of the carriers whose names are set forth in paragraph 1 of Order E-24237, issued contemporaneously herewith, upon the effectiveness of the certificates respectively issued thereunder.

2. That this order shall be effective upon the date of the approval by the President of the United States of Order E-24237, issued contemporaneously herewith.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Order No. E-24242

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 5th day of April, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That the joint motion of Trans International Airlines and World Airways filed herein on February 1, 1966, be and it hereby is denied.

4. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied.

5. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE
APPROVED:

LYNDON B. JOHNSON
September 27, 1966

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24242.

[The certificates issued to Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc., which are identical to the above certificate have been omitted.]

APPENDIX C

E-23350

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

Decided: March 11, 1966

Certificates issued to American Flyers Airline Corp., Capitol Airways, Johnson Flying Service, Modern Air Transport, Purdue Aeronautics Corp., Saturn Airways, Southern Air Transport, Trans International Airlines, World Airways, and Zantop Air Transport authorizing civil and military charters of persons and property between the 50 States of the United States and the District of Columbia, subject to certain conditions.

Decision deferred as to applications of Overseas National Airlines, Standard Airways, and Vance International Airways for further hearing on qualifications.

New Part 378 of the Special Regulations, which grants indirect air carrier authority to tour operators and sets forth the provisions governing the conduct of inclusive tour charters by the tour operators and the supplemental air carriers, being concurrently adopted and issued by the Board.

Part 208 of the Economic Regulations revised and reissued so as to incorporate therein new definition of charter flight to allow the engagement by the char-

tering organization of one-third capacity of an aircraft for the movement of passengers on a time, mileage, or trip basis and to set forth therein terms, conditions, and limitations governing the operations of the supplemental air carriers being issued certificates under section 401(d)(3) of the Act.

Except for inclusive tour charters, which are authorized for a five-year period, certificates are being issued for an indefinite period.

Decision as to all applicants with respect to overseas and foreign aspects of supplemental air transportation withheld until action under section 801 of the Act.

APPEARANCES:

Same as in examiner's decision and, in addition, the following:

Berl I. Bernhard for Allegheny Airlines, Bonanza Air Lines, Hawaiian Air Lines, Lake Central Airlines, Ozark Air Lines, Pacific Airlines, Piedmont Aviation, Southern Airways, and Trans-Texas Airways.

Richard D. Neumann for Holiday Airways.
Howard Boros for Overseas National Airways.
R. P. Smith for Purdue Aeronautics Corporation.
Judah Best and *Martin L. Friedman* for United States Overseas Airlines.

OPINION

BY THE BOARD:

This is a consolidated proceeding on the applications of seventeen applicants seeking certificates of public convenience and necessity under section 401(d)

and six are not fit, willing, and able;[4] (5) appropriate regulations should be adopted to implement the authority being granted and prescribe the limitations thereon.

Exceptions and briefs to the Board have been filed,[5] and the Board has heard oral argument.

Upon consideration of the entire record, we find that we are in agreement with the examiner's disposition of the domestic issues with but one significant exception. We have decided that rather than finally dispose of the applications of ONA, Standard, and Vance, we should reopen the record for further hearings before the examiner on the current qualifications of the three applicants. Accordingly, except as modified herein, we adopt as our own the findings, conclusions, and recommendations of the examiner on the domestic issues contained in his decision which is attached hereto as an appendix.[6]

Since the examiner in his thorough and carefully considered recommended decision dealt fully with the issues in the case, we will limit our opinion to certain

---

[4] Conner, Holiday, ONA, Standard, Stewart, and USOA.

[5] Exceptions and briefs were filed by American Flyers, Capitol, Conner, Holiday, Johnson, Modern, ONA, Purdue, Saturn, Southern, Standard, Stewart, TIA, Vance, World, Zantop, The Flying Tiger Line, Lake Central Airlines, Local and Short-haul Carriers, Mackey Airlines, Pan American-Grace Airways (Panagra), Trans Caribbean Airways, and the Trunkline intervenors.

[6] The examiner issued a single decision covering both the domestic issues and the overseas and foreign issues. For convenience, we are attaching the examiner's decision in its entirety. We obviously do not here adopt the portions of the decision directed to matters that are subject to the approval of the President.

matters raised on exceptions and our reasons for the limited reopening.

Inclusive Tour Charters

A major issue in the proceeding involves the question of inclusive tour charters. These are charters to tour operators selling packaged tours to individual members of the public. As already indicated, the examiner found that such tour charters could be lawfully authorized by the Board and would meet a substantial public need for low-cost pleasure air travel. He further found that the tour authorization would economically strengthen the supplemental carriers without having a materially adverse effect on the certificated route carriers. Accordingly, he recommended the grant of such authority for a five-year period, subject, however, to a set of comprehensive regulatory provisions designed to assure that the tours would be limited to group travel, rather than individually ticketed point-to-point transportation.

We are in full agreement with these findings and conclusions and find, in the main, there is no necessity to explore them further. However, several exceptions warrant comment.

Legal Issues. Under the definition of supplemental air transportation in section 101(33) of the Act, we may authorize supplemental air carriers to engage solely in "charter trips." The argument is made that the term "charter trip" does not include charters to tour operators acting as indirect air carriers for the purpose of transporting inclusive tour groups whose members are gathered from the general public, and that charters would be mere subterfuges for individually ticketed transportation. The argument is based primarily on the claim that, while the statute does not spell out a prohibition against inclusive tour charters,

its legislative history expresses such an intention. The examiner correctly rejected this argument.

In our view, the statute on its face clearly leaves to the Board's exercise of its sound discretion the power to define the term "charter" so long as we preserve the basic distinction between group travel and individually ticketed travel. This principle was established in the *Transatlantic Charter Investigation*, Docket 11908, and we are persuaded that it governs this case as well.

In the *Transatlantic* case the Board, for the first time, authorized supplemental carriers to charter space to two groups on one aircraft.[7] This split-chartering was attacked by the certificated route carriers on the ground that the legislative history of P.L. 87-528, the Supplemental Air Carrier Act, demonstrated that Congress intended that the word "charter," as used therein, should not be expanded beyond its traditional scope. The court decisively rejected this argument, stating:

> "We are unable to conclude that the term 'charter trips' has a fixed meaning . . . . We conclude Congress intended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs . . . . . We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." [8]

---

[7] Orders E-20530, 20531, issued March 3, 1964.

[8] *American Airlines, Inc., et al.* v. *C.A.B.* 348 F. 2nd 349, 354 (C.A.D.C., 1965).

Moreover, the element of novelty, which was present in split charters, is absent here. Inclusive tour charters are well established in surface transportation, and their legality has long since been settled, as against contentions that they are mere subterfuges for individually ticketed transportation. The question arose in the leading case of *Tauck Tours*, and involved the issue of whether the Interstate Commerce Commission had the power to issue a broker's license to a travel agency authorizing the travel agent to charter buses from motor carriers licensed to engage only in charter services. In its first report of the case, Division 5 of the Commission limited the broker's authority to sell individual all-expense tours to the use of motor carriers authorized to perform services on an individual-ticket basis and at individual-ticket rates, on the ground that the proposed services were not bona fide charters.[9] On reconsideration, however, Division 5 concluded that the charters were lawful. It recognized that a motor carrier whose authority was limited to charter services could not perform individually ticketed services "through the subterfuge of a broker selling tickets to a number of persons who purchase individual transportation between two points." [10] Such a group would not constitute a bona fide charter party since "there does not exist any community of interest among these persons other than a desire for transportation between identical points." [11] However, a group of individuals participating in an all-expense tour venture

---

[9] *Tauck Tours, Inc., Extension—New York, N. Y.*, 49 M.C.C. 491 (1949).

[10] 52 M.C.C. 373, 376 (1951).

[11] *Ibid.*

"have more than just a mere desire to travel between the same points. They are participants in a group which will maintain its identity for some predetermined period of time, be under the direction of a guide, and enjoy substantially identical accommodations and experiences. Upon further consideration we are convinced that individuals by agreeing to become group members for the sake of group advantages, achieve a degree of cohesiveness such that, even though the group was organized by applicant, it is entitled through applicant as its agent to deal with the carriers as a group and to buy charter service for the group from the carriers . . . ." [12]

Division 5's report was affirmed by the full Commission applying substantially the same reasoning.

A three-judge Federal District Court affirmed the Commission's conclusion. In the court's view "a good deal more than bare individual transportation is involved. The tour is attractive because it is a group adventure . . . . The important thing is that the Tauck group is a cohesive whole interested in a tour for pleasure, and not in mere transportation." [13] This conclusion was affirmed by the U. S. Supreme Court.[14]

Thus, inclusive tour charters are supported by precedent and practice in the field of surface trans-

---

[12] *Ibid.*

[13] *National Bus Traffic Assn.* v. *United States*, 143 F. Supp. 689, 696-7 (D.C. N.J., 1956). It is true that the court relied in part on the fact that all-expense tour charters were long established in the motor carrier field and upon the absence of any legislative history evidencing an intention to prohibit them. However, we agree with the examiner's reading of the decision that these factors were not decisive considerations.

[14] 352 U.S. 1020 (1957).

portation. It is true that the Board has not hitherto authorized inclusive tour charters in air transportation, but our determinations not to do so have been clearly based on policy rather than legal grounds. On the other hand, the Board has not required "affinity" of a group before it may itself apply for charter transportation.[15] And, in the cargo field, it has allowed freight forwarders to charter aircraft for transportation of consolidated cargo, against the claim of some parties that this policy was inconsistent with the Board's policy of prohibiting agent-assembled passenger charters.[16]

But it is argued that all of the foregoing is overridden by legislative history. It is suggested that because the Senate bill specifically authorized inclusive tours, whereas the version ultimately enacted was silent on the matter, Congress intended to prohibit such tours. On the contrary, this sequence of events simply demonstrates that Congress intended not to freeze the definition, but to leave the question open for the Board to determine as a regulatory matter. This conclusion is reinforced by a closer analysis of the legislative history.

During the hearings on the bills, there was a great deal of testimony relating to the Board's regulations defining charters as restricted to "homogeneous" groups.[17] The supplementals felt that the term "char-

---

[15] See, for example, *Pan Am. World Airways, et al., IATA Agreements*, 23 C.A.B. 275, 280-281 (1956); *IATA Agreements, Group Excursion Fares*, 26 C.A.B. 755, 756 (1958).

[16] *International Airfreight Forwarder Investigation*, 27 C.A.B. 658, 668-669 (1958).

[17] Hearings before Subcommittee of Commerce Committee on H.R. 7318, H.R. 7512, and H.R. 7679, 87th Cong., 1st Sess. 80, 189, 231 (June 20, 21, and 23, 1961). Hearings before

ter" should be defined so as to compel the Board to liberalize its regulations and allow them to carry inclusive tours as charters. S. 1969, as reported to the Senate on August 8, 1961, defined charters so as to include specifically a charter to a person who offers all-expense tours to the public.[18] The Senate Commerce Committee Report supporting this definition explained that "because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter," the term should be defined in the statute.[19]

Unlike the Senate bill, the bill passed by the House limited supplementals' certificates to "charter trips" and did not define the term (H.R. 7318, as amended, September 13, 1961). The House Committee preferred to leave the definition of charter to the Board. Its report stated:

> "The supplementals recommended that a definition of charter be written into the bill and this

---

Aviation Subcommittee of Commerce Committee on S. 1969, 87th Cong., 1st Sess. 54, 61, 98-99, 110-111, 132, 136, 143, 151, 156, 179, 186, 267 (June 26, 29, and 30, 1961).

[18] The bill contained the following definition: " 'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense paid tour."

[19] S. Rep. No. 688 (Calendar No. 664), 87th Cong., 1st Sess. 13 (Aug. 8, 1961).

was given consideration by your committee. The bill passed by the Senate has such a definition.

"Your committee, however, after considering the problem, came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." [20]

The bill as reported by the Conference Committee and as enacted followed the House version and eliminated the definition of "charter service."

In short, the Senate version of the bill as well as the Senate Committee Report make clear that the Senate was dissatisfied with the Board's historic refusal to authorize inclusive tour charters. On the other hand, the House bill contained no reference one way or the other to all-expense tours, and the House Committee Report clearly indicates that this matter was to be left to the Board to determine. The ultimate adoption of the House version strongly supports a construction of the statute in line with the House Committee Report.

Thus, the clear meaning of the statute is reinforced by the sequence of events in the Senate and the House and the authoritative Committee Reports explaining those events. Under these circumstances, there is no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers. This is not a situation where resort to floor debate is required to explain ambigui-

---

[20] H. Rep. No. 1177, 87th Cong., 1st Sess. 11 (Sept. 13, 1961).

ties in the action taken by Congress. In any event, the remarks made on the floor fall far short of a clear consensus.[21]

Considering all of the foregoing, we are persuaded that we have the power to authorize inclusive tour charters as "charter trips" under section 101(33) provided that we preserve the basic distinction between group and individual travel.

---

[21] Only two members of Congress, both Senators, expressed anything approaching an unequivocal statement that the Board would lack legal power to authorize inclusive tour charters (Senator Scott, 108 Cong. Rec. 12284-5; and Senator Cotton, 108 Cong. Rec. 12284). Three other members of Congress, including the Chairmen of the relevant House Committee and Subcommittee, while stating opposition to the grant of inclusive tour authority by the Board, expressed no opinion as to the Board's legal authority under the bill to do so (Senator Thurmond, 108 Cong. Rec. 12285; Representative Harris, 108 Cong. Rec. 12322; and Representative Williams, 108 Cong. Rec. 12322). Finally, Senator Monroney, the Chairman of the Aviation Subcommittee of the Senate Interstate and Foreign Commerce Committee, while not specifically addressing himself to inclusive tours, flatly stated that the matter of the definition of charter was to be left to the Board's discretion (108 Cong. Rec. 12283).

APPENDIX D

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentieth day of July, one thousand nine hundred and sixty-seven.

Present:

HON. PAUL R. HAYS,
HON. WILFRED FEINBERG, Circuit Judge,
HON. EDWARD C. MCLEAN, District Judge.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., PURDUE AERONAUTICS CORP. (PURDUE), AMERICAN FLYERS AIRLINE CORP., INTERVENORS

A petition for review of orders of the Civil Aeronautics Board together with a motion by the respondent to dismiss the petition for lack of jurisdiction or in the alternative to transfer the action to the United States Court of Appeals for the District of Columbia.

This cause came on to be heard on a transcript of record certified by the Civil Aeronautics Board and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that said orders be and they hereby are set aside and that the action be and it hereby is remanded for further proceedings not inconsistent with the opinion of this court, with costs to the petitioners.

Further ordered, adjudged and decreed that said motion be and it hereby is denied.

A. DANIEL FUSARO
Clerk

A true Copy

/s/ A. Daniel Fusaro
Clerk

[SEAL]

United States Court of Appeals
Second Circuit
Filed July 20, 1967
A. Daniel Fusaro, Clerk

any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

* * * *

Issuance of Certificate

(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board

shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

* * * *

TITLE VIII—OTHER ADMINISTRATIVE AGENCIES

THE PRESIDENT OF THE UNITED STATES

Sec. 801. [72 Stat. 782, 49 U.S.C. 1461] The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

* * * *

TITLE X—PROCEDURE

* * * *

JUDICIAL REVIEW OF ORDERS

Orders of Board and Administrator Subject to Review

Sec. 1006. [72 Stat. 795, as amended by 74 Stat. 255, 75 Stat. 497, 49 U.S.C. 1486] (a) Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of

the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 285060 484

LIBRARY
SUPREME COURT, U. S.

No. 969

FILED
Office-Supreme Court, U.S.
FILED
DEC 28 1967
DEC 28 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
Petitioner,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CHARLES A. HOBBS
Counsel for Petitioner
1616 H Street, N.W.
Washington, D.C. 20006

Wilkinson, Cragun & Barker
Glen A. Wilkinson
Paul S. Quinn
Of Counsel

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON, D. C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. ———

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
Petitioner,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, the American Society of Travel Agents, Inc. (ASTA), prays that a writ of certiorari issue to review the judgment of the U. S. Court of Appeals for the Second Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 380 F.2d 770, and is printed as Appendix A to the petition of the Civil Aeronautics Board, No. 946, and of the supplemental carriers, No. 800.

JURISDICTION

The judgment of the Court of Appeals below was entered July 20, 1967, and rehearing was denied September 29, 1967. Jurisdiction is invoked under 49 U.S.C. § 1486 (f) and 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the Civil Aeronautics Board has the power to define "supplemental air transportation" to include the carriage of inclusive tour charter groups by supplemental air carriers.

STATUTE INVOLVED

The relevant portions of the Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. §§ 1301 et seq., are set forth in Appendix E of the petition of the Civil Aeronautics Board in No. 946.

STATEMENT

On July 20, 1967, the Second Circuit Court of Appeals held that the Civil Aeronautics Board does not have the power to authorize supplemental air carriers to carry inclusive tour charter groups. This decision overturned an award of international inclusive tour charter authority which had been approved by the Civil Aeronautics Board and the President, and it was in direct conflict with a decision of July 19, 1966, by the United States Court of Appeals for the District of Columbia Circuit, which upheld the award of domestic inclusive tour charter authority for supplemental air carriers.

The CAB and several supplemental air carriers have filed petitions for writs of certiorari to review the decision by the Second Circuit. Nos. 946 and 800 respectively. ASTA actively participated at the CAB in the

been approved by the CAB through November 1, 1967, representing approximately 100,000 passengers, and over $11 million in air transportation revenues.[1]

The decision by the Second Circuit which overturns the CAB's grant of inclusive tour charter authority to certain supplemental air carriers for international transportation has caused a virtual abandonment of a meaningful inclusive tour charter program for international air transportation, and has tended sharply to curtail the further promotion of domestic inclusive tour charters.

Because of the direct conflict between the two circuits on an interpretation of precisely the same statute under virtually the same conditions, the CAB has recently refused to authorize certain additional supplemental carriers to conduct inclusive tour charters in international air transportation.[2] Furthermore, it has prompted a member of the CAB to state that further grant of inclusive tour charter authority should not be made to the supplemental carriers until such time as the Board's authority is clarified.[3]

Inclusive tour charters are a well-established and popular form of vacation travel in Europe. They have developed a new market of their own there, with little diversion of the traditional scheduled traffic.[4] The record

---

[1] Petition in No. 800, p. 12. Since November 1, we are advised by the CAB, five additional inclusive tour charter programs have been approved, involving a number of flights and passengers.

[2] CAB Order E-25928, Nov. 7, 1967.

[3] Dissent by Member Gillilland in Reopened Supplemental Air Service Proceeding, CAB Order E-25535, Aug. 16, 1967.

[4] The Examiner in Docket 13795 found that the amount of ITC traffic departing from Britain increased from 249,000 in 1960 to 1,050,000 (estimated) in 1964. Examiner's Opinion p. 57, R. 10074. He found that there was no showing that this traffic had "had any material adverse impact upon the scheduled carriers . . . ." Id. p. 62, R. 10079.

shows in detail how these charters work in England, with the blessing and supervision of the British aviation authorities.[5] The same concept is well-established in the field of passenger bus transportation in this country.[6]

The American Society of Travel Agents represents more than 2,400 travel agencies throughout the United States and Canada. Among its members are many tour operators. The tour operators, along with the supplemental air carriers and potential travelers, constitute the elements necessary to make an inclusive tour charter program work, since the effective promotion of inclusive tour charters either domestically or internationally requires the support and cooperation of travel agents, including tour operators and retail agents. Effective support and cooperation is impossible until the legal status of inclusive tour charters is clarified. This can only come from a review by this Court of the decision of the Second Circuit.

For the foregoing reasons, ASTA urges the Court to grant this petition for writ of certiorari.

Respectfully submitted,

CHARLES A. HOBBS
Counsel for Petitioner

Wilkinson, Cragun & Barker
Glen A. Wilkinson
Paul S. Quinn
Of Counsel

December 27, 1967

[5] Id., R. 10073-10082.

[6] *National Bus Traffic Association* v. *United States*, 143 F.Supp. 689 (D.N.J. 1956), *affirmed* 352 U.S. 1020.

SUPREME COURT U. S.

IN THE

Supreme Court of the United States

Office-Supreme Court, U.S.
FILED
JAN 8 1968
JOHN F. DAVIS, CLERK

OCTOBER TERM, 1967

Nos. 800, 946, 969

WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., SATURN AIRWAYS, INC., PURDUE AERONAUTICS CORP., CAPITOL INTERNATIONAL AIRWAYS, INC. and AMERICAN FLYERS, INC.,

Petitioners,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Respondents.

CIVIL AERONAUTICS BOARD,

Petitioner,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Respondents.

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,

Petitioner,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Respondents.

BRIEF IN RESPONSE TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EDWARD R. NEAHER
25 Broadway
New York, New York 10004
Counsel for Respondents

CARL S. ROWE
GERTRUDE S. ROSENTHAL
Of Counsel

January 8, 1968

INDEX

PAGE

Question Presented 2

Statement of the Case 3

Reasons for Denying the Writ as to Asserted "Waterman" Questions 4

Conclusion 7

Table of Authorities

Cases:

Alaska v. American Can Co., 358 U. S. 224 (1959) 6

Bank of America v. Parnell, 352 U. S. 29 (1956) 6

Calmar Steamship Corp. v. Scott, 345 U. S. 427 (1953) 6

Chaunt v. United States, 364 U. S. 350 (1960) 6

Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp., 333 U. S. 103 (1948) 3, 4, 5, 6

Federal Trade Commission v. Anheuser-Busch, Inc., 363 U. S. 536 (1960) 6

Pan American World Airways, Inc. v. Civil Aeronautics Board, 380 F. 2d 770 (2 Cir. 1967) 2

Salem v. U. S. Lines Co., 370 U. S. 31 (1962) 6

United States v. Republic Steel Corp., 362 U. S. 482 (1960) 6

Waterman, see Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp., *supra*.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U. S. 579 (1952) 5

Statutes:

Federal Aviation Act of 1958:

§801 [72 Stat. 787, 49 U. S. C. §1461] 4

P. L. 87-528 [76 Stat. 143] 2, 3, 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 800, 946, 969

WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., SATURN AIRWAYS, INC., PURDUE AERONAUTICS CORP., CAPITOL INTERNATIONAL AIRWAYS, INC. and AMERICAN FLYERS, INC.,

Petitioners,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Respondents.

CIVIL AERONAUTICS BOARD,

Petitioner,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Respondents.

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,

Petitioner,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Respondents.

BRIEF IN RESPONSE TO PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respondents, Pan American World Airways, Inc., Trans World Airlines, Inc. and American Airlines, Inc., submit this brief in response to the petition for a writ of certiorari filed by the Solicitor General on behalf of the Civil Aeronautics Board (No. 946) (hereinafter "Board"), the separate petition for a writ of certiorari filed jointly by World Airways, Inc., Trans International Airlines, Inc., Saturn Airways, Inc., Purdue Aeronautics Corp., Capitol International Airways, Inc. and American Flyers, Inc. (No. 800) (hereinafter "Supplementals"), and the separate petition for a writ of certiorari filed by American Society of Travel Agents, Inc. (No. 969) (hereinafter "ASTA").

This brief is not submitted in opposition to the granting of a writ of certiorari herein. Its purpose is only to acquaint the Court with the narrow issues decided by the Court of Appeals, which, in view of its decision, held it "need not pass on the other points raised" by respondents (380 F. 2d 770 at 782).

Question Presented

In view of the limited decision below, the only question presented is whether the Court of Appeals correctly construed Public Law 87-528 as not intended by Congress to empower the Civil Aeronautics Board to authorize supplemental air carriers, certificated under that law, to operate in conjunction with tour operators (travel agents) so-called "inclusive tours", whose patronage is derived from individual solicitation and ticketing of members of the general public by the travel agents.

The petition filed by the Solicitor General on behalf of the Civil Aeronautics Board (Board) agrees that the only question presented is whether the Board has the power to

writ of certiorari. They believe for that reason that no useful purpose would be served at this stage by stating the case as they view it and will defer such a statement until briefs on the merits are submitted.

Because petitioners assert, however, that *Waterman, supra,* does raise questions for review at this juncture, respondents set forth below their reasons why review by this Court should be limited to the question of the Board's statutory power under Public Law 87-528.

Reasons for Denying the Writ as to Asserted "Waterman" Questions

I

The Court of Appeals correctly held that it was not precluded from reviewing the question raised as to the Board's authority under Public Law 87-528 simply because the orders raising the question had been approved by the President under Section 801 of the Federal Aviation Act (Act), since international air transportation was involved. As already pointed out (*supra,* p. 3), the Solicitor General agrees that this Court's decision in *Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.,* 333 U. S. 103 (1948), does not support the supplemental air carriers' contention that the court below could not review the question of the Board's power.

The decision of the court below was entirely consistent with the decision of this Court in *Waterman.* This Court explicitly noted there that the petitioner did not challenge the regularity of the Board's proceeding nor did the petitioner raise any justiciable issue as to the Board's statutory authority, the very questions raised here. The sup-

plemental air carriers have not pointed to any other decision of any court which would preclude review of such questions.

Although orders of the Board involving overseas or foreign air transportation are subject to Presidential approval under §801 of the Act, unless an order is within the Board's power to issue it, there is no occasion for the exercise of Presidential discretion. Foreign policy considerations are pertinent to the President's exercise of his discretion to approve or disapprove valid orders. The scope of the Board's power depends not upon the exercise of Presidential discretion with its attendant foreign policy considerations, but is a question of proper statutory construction. Statutory construction is certainly not one of those matters which this Court said "have long been held to belong to the domain of political power not subject to judicial intrusion or inquiry" (333 U. S. at 111).

The contention of the supplemental air carriers that *Waterman* completely bars judicial review of any Board action approved by the President rests on the untenable assumption that although Congress has authorized the issuance of certificates only under defined conditions and in accordance with specified procedures, the Board with the approval of the President may issue certificates under other conditions and without complying with those procedures. But however broad the President's power in the field of foreign affairs, when his action is taken, as here, by reason of a Congressional grant of authority, his action is not immunized from judicial scrutiny by reason of his constitutional authority. The question may still be raised—and examined by the courts—as to whether the Congressional delegation of power was exceeded in this case. See, *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 637 (1952) (Jackson, *J.* concurring).

II

The Board's attempt to raise the question of the application of *Waterman* to "procedural defects" (Board, p. 5, fn. 5) is premature since the court below did not have to reach the question raised by the Board's improper procedure and the application of *Waterman* thereto. Where "other grounds of reversal urged by respondents were not reached by that court [the Court of Appeals], the case is remanded to it for further proceedings in conformity with this opinion." *Salem* v. *U. S. Lines Co.*, 370 U. S. 31, 38 (1962). "The Court of Appeals, in view of its disposition of the case, found it unnecessary to consider any of these questions. They are not related to the major issue in the case" and therefore this Court should follow its decision in *Calmar Steamship Corp.* v. *Scott*, 345 U. S. 427, 444 (1953) and, if it should decide in favor of petitioners on the merits, "remit them [the questions not reached by the Court of Appeals] to the Court of Appeals." See also *Chaunt* v. *United States*, 364 U. S. 350, 356 (1960); *Federal Trade Comm.* v. *Anheuser-Busch, Inc.*, 363 U. S. 536, 542 (1960); *United States* v. *Republic Steel Corp.*, 362 U. S. 482, 493 (1960); *Alaska* v. *American Can Co.*, 358 U. S. 224, 227 (1959); *Bank of America* v. *Parnell*, 352 U. S. 29, 34 (1956).

CONCLUSION

Respondents respectfully submit that this Court should review only the question of the Board's statutory authority to authorize supplemental air carriers to engage in inclusive tours.

Respectfully submitted,

EDWARD R. NEAHER
25 Broadway
New York, New York 10004
Counsel for Respondents

CARL S. ROWE
GERTRUDE S. ROSENTHAL
Of Counsel

January 8, 1968

LIBRARY
SUPREME COURT, U. S.

No. 800

Office-Supreme Court
FILED
MAR 14 196
JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

WORLD AIRWAYS, INC.; TRANS INTERNATIONAL AIRLINES, INC.; SATURN AIRWAYS, INC.; *et al.*, *Petitioners*,

v.

PAN AMERICAN WORLD AIRWAYS, INC.; TRANS WORLD AIRLINES, INC.; and AMERICAN AIRLINES, INC.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR THE PETITIONERS

JERROLD SCOUTT, JR.,
888 - 17th Street, N.W.,
Washington, D. C. 20006,
Counsel for Petitioners World Airways, Inc., and Purdue Aeronautics Corp.,

CLAYTON L. BURWELL,
1815 H Street, N.W.,
Washington, D. C. 20006,
Counsel for Petitioner Trans International Airlines, Inc.,

LEONARD N. BEBCHICK,
818 - 18th Street, N.W.,
Washington, D. C. 20006,
Counsel for Petitioner Saturn Airways, Inc.,

GEORGE BERKOWITZ,
233 Broadway,
New York, N. Y. 10007,
Counsel for Petitioner Capitol International Airways, Inc.,

STEPHEN D. POTTS,
910 - 17th Street, N.W.,
Washington, D. C. 20006,
Counsel for Petitioner American Flyers Airline Corp.

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Ave., N.W.,
Washington, D. C. 20006,
Of Counsel for all Petitioners.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes and regulations involved	3
Statement	3
A. Background of the proceedings	4
B. Legislative history of the Act of July 10, 1962	5
C. Proceedings before the Board	19
D. The Board's inclusive tour charter regulations	24
1. Basic restrictions	24
2. Supervision of tour operators	25
3. Split charters prohibited on inclusive tours	28
4. Temporary nature of inclusive tour authority	28
E. Judicial review	29
Summary of Argument	31
Argument	34
I. The Board's statutory mandate to authorize "charter trips in air transportation * * * to supplement scheduled services" is amply broad enough to encompass the inclusive tour charter authority here in question	35
A. Whenever a particular term in a regulatory statute is not defined by the legislature, the regulatory agency is free to adopt a meaning that is consistent with the statute and that will effectuate the statutory purpose	35

Page

B. The Board's definition of "charter trips" to include inclusive tour charters is consistent with the statute and preserves the administrative flexibility urged on the Congress by the respondent trunk lines 43

C. As a matter of straightforward reading of legislative history, it is plain that the refusal of Congress to define "charter" left the Board quite as free as before to redefine that term from time to time 46

D. The court below improperly and impermissibly varied the clear import of the legislative history because of remarks made on the floor that were inconsistent with both the Conference Report and the language of the statute 47

II. There is no occasion in this case to reexamine the scope of the *Waterman* doctrine 55

Conclusion 58

Appendix—Statute involved 59

AUTHORITIES

CASES:

American Airlines v. *Civil Aeronautics Board*, 192 F. 2d 417 42
American Airlines v. *Civil Aeronautics Board*, 235 F. 2d 845 17
American Airlines v. *Civil Aeronautics Board*, 348 F. 2d 349 ..... 20, 21, 28, 30, 33, 39, 47, 52, 55
American Airlines v. *Civil Aeronautics Board*, 365 F. 2d 939 ..... 3, 29, 33, 39, 47, 53, 55
Ex parte Bakelite Corp., 279 U.S. 438 ..... 34, 57
Braniff Airways v. *Civil Aeronautics Board*, 147 F. 2d 152 42
Brown Shoe Co. v. *United States*, 370 U.S. 294 51
Carpenters Union v. *Labor Board*, 357 U.S. 93 47

Page

Chicago & Southern Air Lines v. *Waterman S. S. Corp.*, 333 U.S. 103 ..... 2, 30, 33, 34, 55, 56, 57
Civil Aeronautics Board v. *Delta Air Lines*, 367 U.S. 316 56
Commissioner v. *Acker*, 361 U.S. 87 51
Delta Air Lines v. *Civil Aeronautics Board*, 247 F. 2d 327 42
First Nat. Bank v. *Walker Bank*, 385 U.S. 252 51
Hardin v. *Kentucky Utilities Co.*, 390 U.S. 1 36
Labor Board v. *Fruit Packers*, 377 U.S. 58 48
National Broadcasting Co. v. *United States*, 319 U.S. 190 35
National Bus Traffic Ass'n v. *United States*, 352 U.S. 1020, affirming 143 F. Supp. 689 ..... 21, 31, 39, 43
NLRB v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175 47
Pan American World Airways v. *Civil Aeronautics Board*, 380 F. 2d 770 ..... 4, 31, 55
Pan American World Airways v. *Civil Aeronautics Board*, D. C. Circ., Nos. 20860 and 21149, decided January 31, 1968 ..... 54, 57
Schwegmann Bros. v. *Calvert Distillers Corp.*, 341 U.S. 389 ..... 48, 49
Securities and Exchange Comm. v. *New England Elec. System*, No. 305, this Term, decided March 5, 1968 36
Steiner v. *Mitchell*, 350 U.S. 247 48
United Air Lines v. *Civil Aeronautics Board*, 278 F. 2d 446, certiorari granted, 364 U.S. 297 ..... 4-5, 17
United States v. *Florida*, 363 U.S. 121 49
United States v. *Merriam*, 263 U.S. 179 43
United States v. *Storer Broadcasting Co.*, 351 U.S. 192 36
United States v. *Wrightwood Dairy Co.*, 315 U.S. 110 48
Woodwork Manufacturers v. *NLRB*, 386 U.S. 612 .. 47, 48

STATUTES:

Act of July 14, 1960, P.L. 86-661, 74 Stat. 527 4
Act of July 10, 1962, P.L. 87-528, 76 Stat. 143 5
Civil Aeronautics Act of 1938, Sec. 401(f), 52 Stat. 973, 989 36

Page

Federal Aviation Act of 1958:

Section 101(33) 2, 5, 19, 29, 31, 34, 40, 43, 59
Section 102 ..... 42, 59
Section 401(a) 60
Section 401(d)(3) 5, 60
Section 801 ..... 3, 23, 55, 60
Section 1006(a) 61
Section 1006(e) 56, 61

5 U.S.C. § 556(e) 56
29, 59
49 U.S.C. § 1301(33) 5, 19
49 U.S.C. § 1302 ..... 42, 59
49 U.S.C. § 1371(a) 60
49 U.S.C. § 1371(d)(2) 5, 60
49 U.S.C. § 1461 ..... 3, 23, 55, 60
49 U.S.C. § 1486(a) 61
49 U.S.C. § 1486(e) 56, 61

CAB Decisions:

ACTA-IMATA Commercial Charter Exchange Investigation, 22 C.A.B. 760 37
Foreign Off Route Charter Service Investigation, 27 C.A.B. 196 37
Free and Reduced Rate Transportation, 14 C.A.B. 481 37
IATA Agreements, Group Excursion Fares, 26 C.A.B. 755 37
International Air Freight Forwarders Investigation, 27 C.A.B. 658 37
Pan American World Airways IATA Agreements, 23 C.A.B. 275 37

CAB Regulations:

Part 208 (various provisions) 3, 28, 38
Part 295 (various provisions) 3, 28, 38
Part 378 (various provisions) 3, 24-28, 41
Various regulations and orders 37-38, 41, 53-54

Page

LEGISLATIVE MATERIALS:

Bills:

H.R. 7318, 87th Cong., 1st sess. 5, 13, 14
H.R. 7512, 87th Cong., 1st sess. 5, 6
H.R. 7679, 87th Cong., 1st sess. 5, 6, 14
H.R. 11132, 87th Cong., 2d sess. 48
S. 1969, 87th Cong., 1st sess. 5, 10-11, 14

Hearings:

Limited Air Carrier Certificates. House Hearings on H.R. 7318, 7512, and 7679, 87th Cong., 1st sess. 5-8, 45
Regulation of Supplemental Air Carriers. Senate Hearings on S. 1969, 87th Cong., 2d sess. 15, 45
Richmond Air Crash. Hearings, House Committee on Armed Services, 87th Cong., 2d sess. 14
Supplemental Air Carriers. Senate Hearings on S. 1969, 87th Cong., 1st sess. 8-10

Reports:

H. R. Rep. 1177, 87th Cong., 1st sess. 13-14, 43
H. R. Rep. 1950, 87th Cong., 2d sess. 15
Sen. Rep. 688, 87th Cong., 1st sess. 11-13

Debates:

107 Cong. Rec. 8929 5
107 Cong. Rec. 17168 13
107 Cong. Rec. 20079-20108 14
107 Cong. Rec. 20108-20110 14
107 Cong. Rec. 20466 14
108 Cong. Rec. 2859-2862 14
108 Cong. Rec. 3696-3700, 3704-3710 15
108 Cong. Rec. 3810, 4019-4023, 4049-4056 15
108 Cong. Rec. 4768, 4805 15
108 Cong. Rec. 12315-12320 15
108 Cong. Rec. 12315-12326 15-17
108 Cong. Rec. 12282-12283 17-18
108 Cong. Rec. 12283-12285 .....18, 50

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 800

WORLD AIRWAYS, INC.; TRANS INTERNATIONAL AIRLINES, INC.; SATURN AIRWAYS, INC.; *et al., Petitioners,*

v.

PAN AMERICAN WORLD AIRWAYS, INC.; TRANS WORLD AIRLINES, INC.; and AMERICAN AIRLINES, INC.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court below (1119a-1143a)* is reported at 380 F. 2d 770. The opinions of the Civil Aeronautics Board in this case (Supplemental Air Service Proceeding, E-23350, March 11, 1966, 332a-384a; on reconsideration, E-23600, 517a-531a; Supplemental Air Service Proceeding, E-24237, approved by the President, Septem-

---

* Numbers with the suffix "a" refer to the printed appendix.

ber 27, 1966, 543a-565a; Reopened Transatlantic Investigation (All-Expense Tour Phase), E-24240, approved by the President, September 27, 1966, 1060a-1082a) have not yet been reported in the C. A. B. reports.

JURISDICTION

The judgment of the court below was entered on July 20, 1967 (1144a). Timely petitions for rehearing and rehearing in banc were denied on September 29, 1967 (1146a, 1148a). The petition for certiorari herein was filed on November 7, 1967, granted on January 29, 1968, and consolidated for argument with Nos. 946 and 969. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1) and 49 U.S.C. § 1486(f).

QUESTIONS PRESENTED

1. Whether the Civil Aeronautics Board, in conformity with Presidential approval, may issue certificates of public convenience and necessity for overseas and foreign "supplemental air transportation" (defined by Section 101(33) of the Federal Aviation Act as "charter trips in air transportation * * * to supplement * * * scheduled service") which authorize "inclusive tour charters" as defined and limited in the orders here involved.

2. Whether under the doctrine of *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, the Board's orders here were reviewable only by the President and not by the courts.[1]

---

[1] This "threshhold jurisdictional question" was specifically reserved by petitioners. Pet. 2, note 1.

STATUTES AND REGULATIONS INVOLVED

1. The pertinent portions of the Federal Aviation Act of 1958 as amended are set forth in the Appendix, *infra,* pp. 59-61.

2. Part 378 of the Board's Special Regulations, "Inclusive Tours by Supplemental Air Carriers and Tour Operators," as amended, is set forth at 411a-436a, 538a-542a, 604a-607a, and 1094a-1096a.

3. Part 208 of the Board's Economic Regulations, "Terms, Conditions and Limitations of Certificates to Engage in Supplemental Air Transportation," as amended, is set forth at 437a-484a, 532a-537a and 597a-603a.

4. Part 295 of the Board's Economic Regulations, "Transatlantic Supplemental Air Transportation," as amended, is set forth at 755a-776a, 898a-926a, and 1090a-1093a.

STATEMENT

Petitioners, supplemental air carriers, are the holders of certificates of public convenience and necessity, issued by the Civil Aeronautics Board (hereinafter "the Board") with the approval of the President (under Sec. 801 of the Act [49 U.S.C. § 1461, *infra,* p. 60]), which authorized them to engage in "supplemental air transportation (including tour authority) with respect to persons and property" in overseas and foreign transportation.

Similar certificates of public convenience and necessity, with identical inclusive tour authority, were issued these petitioners by the Board in respect of domestic travel. Such certificates, which did not require Presidential approval, were challenged by all of the present respondents as *ultra vires;* that challenge was rejected by the District of Columbia Circuit. *American Airlines, Inc.* v. *Civil Aeronautics Board,* 365 F. 2d 939.

The present certificates were thereafter challenged in the Second Circuit by the respondents, all of the petitioners

intervened, and on precisely the same statutory materials that court held that the Board lacked power to present those certificates to the President. *Pan American World Airways* v. *Civil Aeronautics Board*, 380 F. 2d 770. This Court granted certiorari to resolve the conflict.

Briefly, because we discuss below in detail the Board's comprehensive regulations on the matter (*infra*, pp. 24-29), "inclusive tours" are synonymous with the familiar "all-expense" or "package" tour, which includes not only the basic air transportation, but various land arrangements, such as hotel accomodations and the like; while "inclusive tour charters" are arrangements by which the air carrier charters the aircraft to a "tour operator," a travel specialist who sells the entire tour to the public for a single price.

A. BACKGROUND OF THE PROCEEDINGS

The present case represents the culmination of over twenty years of regulation, litigation, and legislation, all directed to determining the role that supplemental air carriers such as petitioners, who at earlier stages of their development were known as "non-scheduled" or "large irregular" carriers, may properly play in the air transport industry.

The earlier history of the supplemental air carriers is set forth, with full documentation to the administrative and judicial proceedings therein involved, in Point IA of the Board's brief in No. 946, in which the Board seeks reversal of the same judgment that is under review in this case. It is therefore sufficient for us to note that the decision which brought matters to a head was *United Air Lines* v. *Civil Aeronautics Board*, 278 F. 2d 446 (D.C. Cir.), inasmuch as that decision placed in doubt the entire statutory basis for continued operations by supplemental carriers. In order to preserve the status quo, Congress passed the stop-gap Act of July 14, 1960, P. L. 86-661, 74 Stat. 527, while this Court granted certiorari and remanded the case to the

District of Columbia Circuit, directing that tribunal to retain jurisdiction until such time as further legislation was enacted. 304 U.S. 297.

That further legislation was the Act of July 10, 1962, P. L. 87-528, 76 Stat. 143, which not only provided a clear statutory basis for continued operations by the supplemental air carriers, by enabling the Board to grant certificates of public convenience and necessity in "supplemental air transportation" (Sec. 401(d)(3), 49 U.S.C. § 1371(d)(3), *infra*, p. 60), but which also defined "supplemental air transportation" in Sec. 101(33) (49 U.S.C. § 1301(33), *infra*, p. 59) as "charter trips in air transportation * * * to supplement the scheduled air service" that the regular route or trunk-line carriers such as respondents are primarily authorized to provide.

As we show immediately below in the discussion of the legislative history of the 1962 Act, Congress did not define the term "charter," in deference to the strong opposition of the regular route carriers to the inflexibility that a statutory definition would entail.

B. LEGISLATIVE HISTORY OF THE ACT OF JULY 10, 1962

The Act of July 10, 1962, P. L. 87-528, 76 Stat. 143, had its origin in two bills prepared by the Board, S. 1969 and H. R. 7318, both 87th Congress, 1st session; see "Statement of Purpose," 107 Cong. Rec. 8929.

The House held its hearings first, on H. R. 7318 as well as on H. R. 7512 (a measure introduced by Mr. Moulder of Missouri at the request of certain supplemental carriers) and on H. R. 7679 (introduced by Mr. Collier of Illinois at the request of the Air Transport Association, representing all of the trunk-line carriers).[2]

---

[2] *Limited Air Carrier Certificates.* Hearings before the Transportation and Aeronautics Subcommittee of the House Committee on Interstate and Foreign Commerce on H.R. 7318, 7512, and 7679, all 87th Cong., 1st sess. Cited as "House Hearings."

Charter was defined in Sec. 1 of H. R. 7512 as "air transportation performed pursuant to an agreement for the entire capacity of an aircraft." Neither of the other bills undertook any definition of charter.

Board Chairman Boyd told the House Committee that the supplemental carriers should be granted charter authority (House Hearings, p. 42), and that the matter of what constituted a charter should be flexible (*ibid.*, pp. 29, 30, 41, 42).

Mr. Burwell, appearing for an association of supplemental carriers, stressed the difficulties his members had encountered in consequence of restrictive interpretations of what was included within the Board's concept of charter (pp. 127-129), asserting that it was narrower than the view held by the Interstate Commerce Commission and by the Maritime Commission (pp. 127-129). He complained that under existing interpretations his members could not compete with foreign airlines (p. 132), stressed that the supplementals' basic need was the development of the charter market (p. 139), and asked the committee to formulate a legislative definition of a charter (pp. 126, 131, 147).

Other witnesses similarly complained of the Board's restrictive definitions of charter (pp. 156, 198, 199), testified that the foreign airlines were getting the charter business in consequence (pp. 156, 190), and repeated their desire for a statutory definition (pp. 166-167, 189, 190).

Thereafter the Subcommittee heard Mr. Tipton, President of the Air Transport Association, who presented the trunk lines' views; he opposed the Board's bills and H. R. 7512, favoring only H. R. 7679 (pp. 204-205, 233), essentially because, in the view of the trunk lines, the proper function of the supplementals lay in the charter field (pp. 228-229). He said (p. 232), "I think the area in which they have conducted their operation is primarily charter, and it is in that area where they have the least adverse impact on the scheduled system."

Mr. Tipton (and his counsel, Mr. Stratton) expressed themselves as favoring the charter definition then contained in the Board's regulations (pp. 230, 231). In a subsequent letter to the Subcommittee, Mr. Tipton reiterated his objections to a legislative definition of charter, saying (pp. 239-240)

> "(1) There is no present need to amend the Federal Aviation Act with respect to the definition of 'charter.' The problem is basically a regulatory one. It is essential to maintain standards of charterworthiness which safeguard against fictitious charters being set up by ticket agents or others who sell individual tickets to the general public. The Board should have appropriate flexibility to control or modify these standards in the light of experience and changing conditions.
>
> "(2) The Board's basic definition of 'charter' has given rise to no serious problems in domestic passenger operations. Conditions in the North Atlantic travel market have necessitated more detailed regulation—and more frequent amendments to the regulation—to prevent individually ticketed operations under guise of charter.
>
> "(3) The attack on the Board's charter regulations as 'unclear' distorts the problem. At the very time the supplementals are trying to lead the committee members to believe the transatlantic charter rules of the Board are 'unclear', one of the supplementals has obtained an extensive new seasonal authorization on the basis that the 'tests of charterworthiness * * * are explicit and well understood.' (See discussion in attached memorandum.) The supplementals are thus trying to have it both ways.
>
> "(4) The proposed definition of 'charter' in H. R. 7512 is defective. It is unclear and, indeed, dangerous. It fails to incorporate any controls to prevent fictitious charters which would actually entail sale of individual tickets to the general public."

In the accompanying memorandum referred to in par. 3 of the foregoing quoted letter, Mr. Tipton said (House Hearings, pp. 240, 243):

> "H. R. 7512 would authorize the supplemental air carriers to perform '* * * (1) unlimited charter opera-

tions on a planeload basis for the carriage of passengers and property in interstate, oversea, and territorial air transportation, with the word "*charter*" herein *being defined as air transportation performed pursuant to an agreement for the use of the entire capacity of an aircraft,* * * *" (Emphasis supplied [in the original]).

* * * * *

"The basic guideline being this clear, an appropriate function of the Board is to prescribe regulations, as needed from time to time, to prevent abuses through ticket agents, solicitation of the general public, or other devices for conducting individually ticketed operations under the guise of 'charter.' There is a substantial danger that an attempt by the Congress to spell out, in full detail, the limits of 'charter' would import an unnecessary rigidity in the field, thus hampering ability of the Board to deal with changing circumstances, as well as entailing extremely detailed legislation.

"For such reasons, our view is that there is no present need for the Congress to undertake a detailed definition of 'charter' in the Federal Aviation Act."

The scene now shifts to the Senate, where hearings followed immediately and were completed well before any legislation was reported out by the House Subcommittee.[3]

The testimony before the Senate Subcommittee was essentially repetitive of what had been said to the House Subcommittee just a few days earlier.

Chairman Boyd expressed the view of his agency that the supplementals should and would engage in further development of the charter markets (Senate Hearings, p. 46), where there was much foreign competition (p. 53). While recognizing that "unlimited charter service would create a real monster" (p. 36) and that it would not be possible to turn charters loose completely (p. 29), he added

---

[3] *Supplemental Air Carriers.* Hearings before the Aviation Subcommittee of the Senate Committee on Commerce on S. 1969, 87th Congress, 1st session. Cited as "Senate Hearings."

that the Board was reviewing its existing charter policies to see whether they could be liberalized (p. 29).

Mr. Burwell for the supplementals again urged "a clear definition in the act of what is a charter" (p. 103), because of existing restrictive interpretations (pp. 106, 111).

Another witness for the supplementals, Mr. Anton, offered the following statutory definition (p. 185):

> "(13) 'Charter trip' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or the movement of property, on a time, mileage or trip basis, in domestic, overseas, intraterritorial or foreign commerce."

Mr. Tipton for the trunk lines again voiced the view that the supplementals should concentrate on the charter business (Senate Hearings, pp. 217, 230-231, 234), while Mr. Stratton, one of the trunk lines' lawyers, engaged in a colloquy with Chairman Monroney. The Chairman expressed impatience "with what appears to be not an effort to encourage the legitimate charter but to prohibit by all possible redtape the proper use of it" (p. 270), whereupon Mr. Stratton said (p. 271) that "this sort of thing is the sort of reason for preserving some flexibility in the Board to modify the rules from time to time in the light of experience."

The Senate Hearings incorporate a memorandum subsequently submitted by Mr. Tipton on behalf of the trunk lines (pp. 274-278), entitled, "THERE IS NO PRESENT NEED FOR A DEFINITION OF 'CHARTER' IN THE FEDERAL AVIATION ACT." In the light of the trunk lines' present position, it seems appropriate to quote the following brief passages from their representative's 1961 memorandum (pp. 277, 278):

> "A noteworthy aspect of the Board's transatlantic charter policy is that it has not been static, but has

changed from time to time in the light of the problems of the day.

* * * * *

"The foregoing summary reviews in only the most general outline the Board's transatlantic charter policy during the past dozen years. It points up, however, a highly important consideration. The policy has been—and quite properly so—responsive to the Board's views of changing needs and changing conditions. This has entailed frequent modification of the definitions, terms, and conditions applicable to transatlantic charters involving noncertificated carriers. Manifestly, these needs and conditions will continue to change. The field is, accordingly, one calling for skilled and intelligent regulatory action, the precise detail of which may vary from time to time. The existing Federal Aviation Act provides an adequate framework for such regulation of 'charter.' As the Board has observed, 'Congress must be taken to have used "charter trips" with the intention of signifying its usual and ordinary connotation, which is merely a flight involving a contract for the entire capacity of the aircraft. * * *' ('Charter Flight Tariff Investigation,' 15 CAB 921, 923 (1952)).

"The basic guideline being this clear, an appropriate function of the Board is to prescribe regulations, as needed from time to time, to prevent abuses through ticket agents, solicitation of the general public, or other devices for conducting individually ticketed operations under the guise of 'charter.' There is a substantial danger that an attempt by the Congress to spell out, in full detail, the limits of 'charter' would import an unnecessary rigidity into the field, thus hampering ability of the Board to deal with changing circumstances, as well as entailing extremely detailed legislation.

"For such reasons, our view is that there is no present need for the Congress to undertake a detailed definition of 'charter' in the Federal Aviation Act."

Although the Senate hearings followed those in the House, the Senate's bill was reported out first. The progress and development of the proposed "charter" definition appears from the several committee prints of S. 1969.

In Committee Print No. 1, July 10, 1961, that definition was formulated in the following terms:

> "(13) 'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation of persons to the general public."

The foregoing definition was continued in Committee Print No. 2, July 14, 1961, except that there was added at the end, separated by a comma, the clause, "other than in connection with all expense-paid tours." There were no additional changes in Committee Print No. 3, July 18, 1961, but in Committee Print No. 4, July 24, 1961, the final clause was changed to read, "other than as a member of a group on an all-expense-paid tour." In that final form, it was reported to the Senate on August 8, 1961 (Sen. Rep. No. 688, 87th Cong., 1st sess., § 101(13) at p. 22).

The cited Senate report, after pointing out that the definition would be applicable to trunk line as well as supplemental carriers (p. 6), included an extensive discussion of Charter Service (pp. 12-14); this appears in full at 91b-172b.[4] It is sufficient here simply to set forth the Senate

---

[4] Numbers followed by the suffix "b" refer to the Appendix of Legislative Materials that has been filed as a supplement to the briefs of the several petitioners in all three consolidated cases, Nos. 800, 946, and 969. Except for the pagination, that Appendix is identical with Vol. III of the Joint Appendix used in the court below, which however contains certain inaccuracies that will be pointed out in due course.

Committee's justification for its definition of "charter" (pp. 13-14; 120b-122b):

> "A charter, by common law and general practice in the transportation industry, means essentially the lease of the entire vehicle, in this case the aircraft, for a period of time or for a particular trip. Because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter, particularly in international air transportation, the committee has incorporated the common law definition of charter in the statutory definitions contained in the Federal Aviation Act. The bill thus provides that—
>
> 'charter service' means air transportation * * * where the entire capacity of one or more aircraft has been engaged * * * on a time, mileage or trip basis * * *'
>
> "However, it is not the intention of the committee to permit individually ticketed service to be offered to the general public under the guise of charter. The proposed statutory definition, therefore, provides that charter shall not include such individually ticketed service whether offered by an air carrier directly or by a travel agent.
>
> "This restriction is subject to one exception because there is one circumstance in which a carrier or travel agent may offer the services to individual members of the public and still conform to the traditional concept of charter. This is in connection with an all-expense-paid group tour. If a travel agent charters an aircraft for an all-expense-paid tour and then offers to individual members of the public the right to participate as a member of the group, this is a very different sort of service from individually ticketed transportation.
>
> "The proposed statutory definition incorporates this exception by providing that charter shall not include transportation offered to individual members of the general public 'other than as a member of a group on an all-expense-paid tour.' The committee has received representations that this exception is open to the abuse that it might be used as a guise to offer individually

ticketed service. However, the Civil Aeronautics Board has ample authority, because of its power to specify the terms, conditions, and limitations of the certificate under section 401 and its general power to make any necessary rules or regulations to carry out the provisions of the act under section 204, to prevent any violation of the clear intent of the statute. This the Board can accomplish by specifying in its regulations the minimum requirements which must be met before the service offered qualifies under the statutory exception.

"However, several members of your committee have expressed the desire that the Board submit reports setting forth its experiences in administering the provision pertaining to all-expense-paid tours. Accordingly, your committee requests the Board to report annually on this subject for the next 3 years, either in a separate report or in its annual report to the Congress. If the Board's experience in administering this section should demonstrate that additional statutory authority is necessary, your committee will expect the Board to incorporate appropriate recommendations to that end in its report."

When S. 1969 as thus reported was reached for consideration, it passed the Senate on August 28, 1961, without further significant debate on the issues now involved (107 Cong. Rec. 17168).

Some two weeks later, the House Committee reported out a fully rewritten H. R. 7318 (H. R. Rep. 1177, 87th Cong., 1st sess.; 17b-90b), which contained no definition of charter, the Committee saying (p. 11):

"The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.

"Your committee, however, after considering the problem, came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very

difficult subject and any effort to freeze a definition of charter service into law could well lead to complications."[5]

The House debates (107 Cong. Rec. 20079-20108) throw little light on any issues now pertinent; Mr. Collier, who had introduced H. R. 7679, the only bill that the trunk lines originally approved (House Hearings, pp. 204-205, 233), said that "Basically, the prime service for supplemental carriers is that of charter service" (107 Cong. Rec. 20083); at the end of the discussion, H. R. 7318 was passed, after which it was immediately added as an amendment in the nature of a substitute to S. 1969 (107 Cong. Rec. 20108-20110). Those amendments were so extensive that no conference on the differences was possible in the remainder of the session, and accordingly action was postponed until 1962 (107 Cong. Rec. 20466).

On February 26, 1962, Senator Monroney presented amendments to the House version of S. 1969, which reinstated the final draft of the Senate definition of "charter service" (108 Cong. Rec. 2859-2862). He pointed out that the House had given the Board far less authority in respect of supplemental carriers' individual ticketing authority than the Senate had proposed; that a fatal accident to a supplemental carrier's plane in November 1961 had indicated the need of further regulation;[6] and that accordingly an additional hearing would be held.

---

[5] This paragraph is inaccurately reproduced in the Legislative Appendix; the original report does not contain the italics now appearing at 42b.

[6] See *Richmond Air Crash, November 8, 1961.* Hearings before a Special Subcommittee of the House Committee on Armed Services, 87th Cong., 2d sess.; Report of Special Subcommittee, No. 41, February 8, 1962.

At that hearing,[7] the representative of the supplemental carriers, predictably enough, favored the restoration of the original Senate definition of charter service (Sen. Supp. Hearing, p. 42). Shortly thereafter the Committee print of March 8, 1962, included that amendment, and after discussion of other matters, principally the liability insurance provisions of the new version of S. 1969, the rewritten measure was adopted by the Senate and sent to conference (108 Cong. Rec. 3696-3700, 3704-3710).

In the House, a rule became necessary to send the Senate amendments to conference (108 Cong. Rec. 3810, 4019-4023, 4049-4056). One member, Mr. Walter of Pennsylvania, attacked the Senate's charter definition as leading to "phony tours in which the only significant item was the air fare" (108 Cong. Rec. 4050).

Later in March additional conferees were appointed by both Houses (108 Cong. Rec. 4768, 4805), but the conference report did not appear for three more months (H. R. Rep. 1950, 87th Cong., 2d sess., June 28, 1962; 108 Cong. Rec. 12315-12320; 173b-206b).

That report was unanimous, signed by all 17 members of the committee of conference (p. 9; 191b); it dropped the Senate definition of charter (p. 1; 173b-174b); but the Statement of the Managers on the part of the House (pp. 10-17; 192b-206b) says nothing whatever on that point.

On June 29, 1962, the day following, Chairman Harris of the full House Committee on Interstate and Foreign Commerce called up the Conference Report (108 Cong. Rec. 12315), after which he yielded to Chairman Williams of the Subcommittee (p. 12321) to "explain some of the

---

[7] *Regulation of Supplemental Air Carriers.* Hearing before the Aviation Subcommittee of the Senate Committee on Commerce on proposed amendments to the House substitute amendment to S. 1969, 87th Cong., 2d sess. Cited as "Sen. Supp. Hearing."

background of the provisions included in this conference report." Mr. Williams then said (p. 12321):

> "To cover the high spots of the bill the Senate receded in its definition of 'charter.' The House did not have a specific definition of 'charter' but left that up to the Civil Aeronautics Board to define. It is presumed they will use the same definition they have been using throughout the years."

Mr. Walter asked (p. 12322) what happened to the charter definition; Mr. Williams replied that—

> "The Senate receded and accepted the position of the House on that provision. So, there is no statutory definition of 'charter' in the bill. That definition will be the one which is presently in effect under a regulation of the Civil Aeronautics Board. The all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in our position on that, also.".

Mr. Harris then resumed the discussion (p. 12322), saying that the bill contained no definition of "charter"; that, "As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter;" and, finally, in a separate statement, that "the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with the abuses. Thus the bill, as pased by the House, contained no definition of charter."

The foregoing discussion appears at 229b-233b, but not quite accurately, inasmuch as the Legislative Appendix fails to reflect that the statement read by Mr. Harris appears in the Congressional Record in smaller type (108 Cong. Rec. 12322; 231b-232b).

Thereafter Mr. Collier read, as a speech of his own, the statement that Mr. Harris had just finished reading (108 Cong. Rec. 12324; 232b-233b). Mr. Harris's statement and Mr. Collier's speech are absolutely identical, word for word.

The Conference Report was then adopted by the House by a vote of 338-0 (108 Cong. Rec. 12325-12326).

On the same day, June 29, Chairman Monroney called up the Conference Report in the Senate (108 Cong. Rec. 12282-12283), pointing out preliminarily that it "contemplates a supplemental air carrier industry much more limited in terms of its role in air transportation than that which was envisaged by the committee and endorsed by the Senate.

> "The conference report adopts the provision of the House bill limiting the permanent role of these carriers to charter service. * * *"

Briefly, at the time of the hearings on the bill, the Board had permitted the supplemental carriers not less than ten flights a month with individually ticketed passengers, but its authorizations had twice been set aside for want of specific findings. *American Airlines* v. *Civil Aeronautics Board,* 235 F. 2d 845 (D.C. Cir.); *United Airlines* v. *Civil Aeronautics Board,* 278 F. 2d 446 (D.C. Cir.). The Senate would have eliminated any requirement for these findings, permitting the Board to make generalized findings. But the conference report provided for a two-year phase-out of all individually ticketed transportation by the supplemental carriers, limiting them to charter service almost exclusively.

After explaining the reasons underlying the foregoing provisions of the conference report, Chairman Monroney continued (108 Cong. Rec. 12283; 235b-236b):

> "The charter definition contained in the Senate version of the bill was omitted from the bill agreed to by the conferees. This was done unilaterally by the Senate conferees because of the decision which had been made on individually ticketed authority. The charter definition would have operated to prohibit the granting of split charters—that is, the transportation of more than one charter group in a single aircraft. We felt that the Board should be left free to determine on its merits the desirability of permitting the supplemental carriers to conduct such charters, in view of the fact that the charter business will ultimately represent the only source of revenue for these carriers. Another reason why we desired to leave the Board sufficient flexibility so that it might permit split charters was the effort of the Defense Department to encourage these carriers to acquire modern turbine-powered equipment for the civil reserve air fleet. The size of such aircraft makes it virtually impossible to find a charter group sufficiently large to fill an entire aircraft."

Then followed comments by Senators Cotton, Scott, and Thurmond, all three of whom were signatories of the Conference Report (108 Cong. Rec. 12283-12285), to the effect, though with varying emphases, that the elimination of the Senate's definition of charter meant that the Civil Aeronautics Board had no latitude to adopt the Senate definition administratively, that the definitional flexibility with which it was invested specifically excluded any power on its part to adopt that particular definition. These views appear in full at 236b-239b.

The Senate then agreed to the Conference Report without a record vote (108 Cong. Rec. 12285), and the bill was signed by the President on July 10, 1962.

C. PROCEEDINGS BEFORE THE BOARD

Following approval of the Act, the Board instituted the *Supplemental Air Service Proceeding* (Docket 13795) to dispose of pending applications for certificates to engage in supplemental air transportation (1a, 2a). The applications to be considered in that proceeding proposed not only domestic service, but also, with the exception of the transatlantic service to be considered below, service from the United States to all parts of the world (8a). Accordingly, there was only one agency proceeding, even though under the Act the Board's orders in respect of international orders required Presidential approval to become effective, while those involving only domestic service became effective immediately.

From the inception of the proceeding, to which all three of the present respondents were parties on their allegation of competitive interest, a basic issue was whether the Board had statutory power to authorize inclusive tour charters (3a, 19a). In statutory terms, that issue was whether inclusive tour charters are properly comprehended within the words "charter trips in air transportation" as they appear in Sec. 101(33) of the Act (49 U.S.C. § 1301(33), *infra*, p. 59). The examiner, in his recommended decision embraced applications for both domestic and foreign operating capacity, concluded that the Board had statutory power to authorize inclusive tour charters, and he recommended grant of such authority (49a-311a).[8]

It is now necessary to revert to the one matter excepted from the foregoing proceeding, supplemental air transportation across the Atlantic; applications to provide such service were at issue in *Translatlantic Charter Investiga-*

---

[8] The examiner's opinion concludes at 206a; it is followed by recommended orders, recommended regulations, and an appendix discussing in detail the financial and technical qualifications of the several applicants.

tion (Docket 11908), which had been instituted earlier (617a-618a), and which had been partially decided before issuance of the examiner's decision in *Supplemental Air Service Proceeding*.

The Board had found in *Transatlantic Charter Investigation* (777a-780a) that three supplemental carriers should be certificated to engage in supplemental air transportation across the Atlantic. It determined, as a matter of discretion, that transatlantic charter authority should not "at the present time" include inclusive tour charters, but authorized the successful applicants to engage in "split charters," i.e., dividing the capacity of an airplane between two charterers. Its authority in the latter aspect, challenged by all three of the present respondents, was subsequently sustained in *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349 (D.C. Cir.).

The President approved the Board's decision to award certificates to two of the supplemental carriers, but returned the matter to the Board for further evaluation of the fitness of the third; and he did not take final action on the Board's recommendation regarding the supplemental carriers' applications to the extent that they sought authority to provide inclusive tour charters. Thus, at the time the *Supplemental* case was ready for argument before the Board, the inclusive tour charter phase of the *Transatlantic* case had not been finally determined (892a). Accordingly, the Board directed consolidated oral argument on the inclusive tour charter issue in both cases, after allowing the parties in the *Transatlantic* proceeding to file briefs and to indicate whether further hearings were required (960a-962a).

On March 11, 1966, following the consolidated oral argument, the Board simultaneously adopted three sets of orders, all of which held that it had statutory power to authorize inclusive tour charters and that it should exercise that authority.

One of these orders (E-23350; 332a-484a; for the opinions proper, see 334a-384a) disposed of the applications for domestic operating authority in the *Supplemental Air Service* case, and it was released immediately.

In its opinion in that case, the Board dealt at length with the inclusive tour charter issues, concluding that it had statutory power to authorize such services and that they should be authorized for an experimental period of five years; the Board agreed with and generally adopted the examiner's findings on these issues (100a-124a, 181a-192a [examiner's discussion]; 336a-346a, 349a-356a [Board's opinion]). This authorization was embodied in Part 378 of the Board's special regulations, issued with its order (414a-436a), which defined and regulated inclusive tour charters; the precise restrictions imposed are set forth in detail below, pp. 24-29.

On the issue of statutory authority, the Board pointed out that the inclusive tour charter fell within the legal concept of charter operations, inasmuch as this Court had held that motor carriers under the Interstate Commerce Act might charter their buses to travel agents, i.e., "brokers," for the transportation of all-expense tours. *National Bus Traffic Ass'n, Inc.* v. *United States*, 352 U.S. 1020, affirming 143 F. Supp. 689 (D. N. J.).

The Board also relied on *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349 (D.C. Cir.), which had held that it was empowered to authorize "split charters." The court had there held (348 F. 2d at 354) that Congress intended to leave the interpretation of the words "charter trips" largely to the Board, and that "the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel, within those limits it is for the Board to evolve reasonable definitions."

The Board also rejected the contentions of the present respondents that selected excerpts from the legislative history indicated that a prohibition against inclusive tour charters was to be read into the statute, this on the view that the statute had been authoritatively interpreted in the split charter case, and that the authority now granted did not offend against the distinctions between group and individually ticketed travel. (336a-346a.)

Finally, the examiner found that inclusive tour charters would meet a substantial public need for low-cost pleasure air travel not otherwise available, and that the inclusive tour authorization would strengthen the supplemental carriers economically without having a material adverse effect on the regular route carriers (129a-136a). Inclusive tour charters, which had not previously been provided in the United States, are designed to attract income groups not now using scheduled airline services for vacation travel; the examiner after analyzing the British experience with such charters, noted that they had "been highly successful in opening up a sizeable new traffic market of persons not previously using air service, to the primary benefit of the low or middle income individual who would not otherwise fly" (118a).

While there could be no precise prediction of the results of this largely experimental type of service, the examiner found that the effect of normal market growth and the stimulation resulting from the inclusive tour and split charters would be to improve materially the supplementals' overall civil passenger charter revenues without significant diversion from the scheduled carriers. He concluded that most tour traffic that might be obtained by the supplementals "would be newly generated rather than diverted from existing services," and that the authorization posed "no significant threat to the certificated route carriers" (134a-135a).

The Board agreed, making additional findings that rejected the present respondents' claims of adverse impact, particularly as contrasted to "the substantial public benefits which we foresee from the new class of service" (348a-349a).

It is now appropriate to turn to the other two orders issued by the Board on March 11, 1966, which dealt with international operations, which therefore required Presidential approval to become effective, and which under Section 801 of the Act (49 U.S.C. § 1461; *infra*, p. 60) could not be publicly released prior to action by the President.

Both of these other orders—or, more accurately, sets of orders—relied entirely on Order E-23350, the domestic service proceeding, in respect of the issue of the Board's statutory power to authorize inclusive tour charters. One of these involved the international phases of the *Supplemental Air Service* case (Orders E-24237-39, 543a-609a), the other dealt with the inclusive tour issues with respect to the two carriers who had previously received certificates in the *Transatlantic Charter Investigation* case (Orders E-24240-41, 1060a-1096a; *supra*, p. 20).

A little later, on April 5, 1966, the Board adopted another opinion in the *Transatlantic* case, awarding similar authority to four additional supplemental carriers (Order E-24242, 1097a-1104a). Here again this opinion and order were not published, but were submitted for the President's consideration together with the two March 11 decisions that had similarly dealt with international operations.

On September 27, 1966, the President approved all three of the foregoing orders (565a, 1082a, 1106a), and they were released to the public three days later (543a, 1060a, 1097a).

D. THE BOARD'S INCLUSIVE TOUR CHARTER REGULATIONS

Under the Board's regulations, inclusive tour charters are severely limited to insure their being entirely different from the normally individually ticketed point-to-point service provided by the respondents.

1. Basic Restrictions

Inclusive tour charters are restricted to services meeting all of the following conditions:

(a) The tour price can be no lower than 110% of the lowest available fare, including stopover charges, that the trunk line carriers offer "for individually ticketed service on the circle route beginning at the point of origin, to the various points where stopovers are made, and return to the point of origin" (§ 378.2(b)(4), 417a-418a; CAB Op., 351a-354a).

(b) Each inclusive tour is required to be performed to a minimum of three stops, not including the point of origin, each stop to be not less than 50 air miles apart (§ 378.2(b)(2), 417a; CAB Op. 352a-353a: "The three-stop requirement will, in our judgment, increase the emphasis on the tour aspect of the package and will provide further assurance against the tours being used as a subterfuge for individually ticketed service between the originating city and the major city of destination.").

(c) "A minimum of seven (7) days must elapse between departure and return" (§ 378.2(b)(1), 417a).

(d) Every inclusive tour operation must, by definition, be performed on a round-trip basis (§ 378.2(b), 416a).

(e) The tour price of an inclusive tour "shall include, at a minimum, all hotel accommodations and necessary air or surface transportation between all places on the itinerary including transportation to and from air and surface

carrier terminals utilized at such places other than the point of origin" (§ 378.2(b)(3), 417a; CAB Op., 353a, ¶ (b)).

(f) Every inclusive tour must be operated by a regulated tour operator who charters aircraft for such tours from a certificated supplemental air carrier (§ 378.2(a) as amended, 1096a).

2. Supervision of Tour Operators

The regulations prescribe that, before any inclusive tour charters may be operated, as well as during the operation and after its conclusion, the Board must be fully informed, and they similarly provide that the Board retains maximum control; here are the details:

(a) Prior approval of the inclusive tour proposal must be obtained from the Board both by the tour operator and by the supplemental carrier involved (§§ 378.10, 378.11(a), 420a; CAB Op., 350a-351a). (This requirement was scheduled to lapse on January 1, 1968, but it has since been extended to extend through the calendar year 1968. §§ 378.10 and 378.18(a) as amended, 32 Fed. Reg. 11986, 11987.)

The Board's justification for the foregoing requirement was in these terms (355a):

> "With respect to the 'prior approval' procedure, prospective tour operators will be required to file a statement containing a detailed picture of their experience, business structure, financial condition and the like (§ 378.12). In addition the regulation sets forth the factors which the Board will consider in determining whether a tour operator applicant is properly qualified to engage in inclusive tour operations (§ 378.11(d))."

(b) The application must include, among other data, a Statement of Tour Operator's Qualifications and the Tour Prospectus (§ 378.11(b) as amended, 539a-540a).

(c) The Statement of Tour Operator's Qualifications requires detailed information regarding incorporation; stock

ownership; citizenship of owners or of directors and stockholders; prior business experience of company, officers, managers, and key personnel; operating authority issued to applicant by United States Government; financing arrangements; and the applicant's most recent balance sheet (Appendix, 430a-433a as amended at 541a).

(d) The Tour Prospectus requires copies of the charter contract and of the contract between the tour operator and the tour participants; the tour operator's surety bond (433a-436a); and the following information (§ 378.13, 422a-423a):

(i) Proposed date and time of each flight;

(ii) Equipment to be used, including the aggregate number of each type of aircraft and capacity;

(iii) Tour itinerary, including name of hotels and length of stay at each and sightseeing or other arrangements if any;

(iv) Tour price per passenger;

(v) Number of persons expected to participate in tour;

(vi) Charter price of the aircraft;

(vii) Individually ticketed air fare, computed as provided in § 378.2(b)(4) [417a-418a];

(viii) Samples of solicitation material proposed by the tour operator, with a requirement that all advertising and solicitation materials employed by the tour operator shall state the name of the supplemental air carrier to be utilized.

(e) Each application must be jointly verified by the supplemental carrier and the tour operator, and filed 90 days in advance of the operation (§ 378.11(a), 420a).

(f) Each application must be served on each direct air carrier serving the points involved in the proposed tour operation, and such direct carriers may object to such

inclusive tour charters within ten days thereafter (§ 378.11 (c), 421a).

(g) The sale of inclusive tour charters by supplementals are restricted to tour operators granted indirect air carrier authority by the Board under § 378.1 as amended (1095a-1096a) and § 378.3 (418a-419a), and such authority may be suspended by the Board without a hearing (§ 378.6, 420a).

(h) No supplemental air carrier may perform any inclusive tour charter trips unless it has on file with the Board "a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation" (§ 378.15, 423a).

(i) All tour operators operating inclusive tours must furnish a surety bond in the amount of at least twice the charter price (§ 378.16, 424a-425a; for the form of bond, see 433a-436a).

(j) "The charter contract between the tour operator and the supplemental carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the tour or tours covered by the contract" (§ 378.14, 423a).

(k) The contract between the tour operator and the tour participants must be non-discriminatory, and must include provisions concerning method of payment; refunds; carriers' liability limitations for passengers' baggage; aircraft equipment substitutions; seating accommodations; and non-performance of tour because of insufficient participants (§ 378.17, 425a).

(l) Finally, the Board requires a joint post-tour report by the supplemental air carrier and the tour operator to show whether or not the tours as authorized were in fact performed, and whether there were any deviations from the operations authorized or described (§ 378.20(a) as amended, 541a).

3. Split Charters Prohibited on Inclusive Tours

Under Part 208 of the Board's Economic Regulations, "Terms, Conditions and Limitations of Certificates to Engage in Supplemental Air Transportation," a charter flight includes a charter for less than the entire capacity of an aircraft. § 208.3(s)(2)(ii)(b), 449a. This is the so-called "split charter," the legality of which was sustained in *American Airlines* v. *Civil Aeronautics Board,* 348 F. 2d 349 (D.C. Cir.).

Similarly, under Part 295 of the Board's Economic Regulations, "Transatlantic Supplemental Air Transportation," half of an aircraft may be chartered by one group and the other half by another. § 295.2(b)(iii)(2) as amended, 1092a.

But where inclusive tour charters are involved, plane capacity may not be thus divided: "'Inclusive tour charter' means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours." § 378.2(a) as amended, 1096a.

4. Temporary Nature of Inclusive Tour Authority

All the supplemental carrier certificates involved in this case have been issued for temporary experimental periods; these extend to April 18, 1969, for transatlantic authority (e.g., 1076a, 1109a, 1112a, 1115a, 1118a), or to November 26, 1971, for all other international authority (e.g., 568a, 571a, 574a, 576a-577a, 579a-580a, 583a, 586a, 589a, 592a, 594a-595a).

The reason for such merely temporary authority was set forth by the Board in its *Transatlantic* opinion (1076a):

> "We will thus be afforded a test period, following which we shall review the tour program to see if it has fulfilled its promise. In the meantime, the Board's

rule making powers will enable it to modify the terms and conditions governing the tour operations if that is necessary in order to protect other segments of the air transportation industry."

E. JUDICIAL REVIEW

The question whether the words "charter trips" in Sec. 101(33) of the Act (49 U.S.C. § 1301(33), *infra*, p. 59) are broad enough to comprehend inclusive tour charters, the central issue herein, has been before the courts twice.

The domestic inclusive tour charter order (E-23350, 332a *et seq.; supra*, pp. 21-23) was challenged by the present respondents in *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939 (D.C. Cir.). As the court there said (p. 941),

> "It is the uncertainty over the meaning of the term 'charter trips' which prompts the necessity for interpretation of the statute, particularly as to whether such term embraces 'inclusive tour charters.'"

The District of Columbia Circuit reviewed both the legislative and administrative history of the Act of July 10, 1962, concluding in favor of the Board's interpretation with these words (365 F. 2d at 948-949):

> "We believe that, if the statements of the floor managers are considered in the light of the foregoing analysis, and sight is not lost of the fact that the legislators did not in fact have the Board's regulations before them when the Act was passed; the Board's interpretation of its statutory power comports with the overall statutory intention of Congress. Although specific conflict does exist to some degree between the statements on the floors of the houses, and the Act itself and the House committee report, much of that conflict is dissipated by the above analysis of the evil apprehended by the legislators and the measures adopted by the Board to prevent its occurrence. Any remaining conflict must give way to the generally accepted maxim of statutory construction that reports by

> the legislative committees responsible for formulating the legislation must take precedence in event of conflict over statements in the legislative debates on the floors of the houses of Congress.''

The court also noted that the foregoing conclusion was in accord with its earlier ruling upholding the Board's split charter regulation, *American Airlines, Inc.* v. *Civil Aeronautics Board,* 348 F. 2d 349, 354 where it had said, after an earlier review of the identical legislative history (quoted in part, 365 F. 2d at 949, as follows):

> '' 'We are unable to conclude that the term charter trips has a fixed meaning or that Congress intended to restrict the Board to a definition of one aircraft—one charter. We conclude that Congress intended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs and changing aircraft; * * * We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions.' ''

The present respondents then took affirmative steps to seek review here of the District of Columbia Circuit's adverse decision in the domestic inclusive tour charter case, only to abandon such action and, instead, to seek review in the court below of the orders now in issue, those entered in respect of international inclusive tour charters.

The Second Circuit rejected the Board's contention that respondents were barred by the doctrine of collateral estoppel from relitigating the same interpretation of ''charter tours'' in the Act that the District of Columbia Circuit had just decided against them; rejected all of the Board's contentions based on *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.,* 333 U.S. 103; and held, on a review of the precise legislative history earlier considered by the District

of Columbia Circuit that "it was in fact manifested in a congressional declaration binding on both the Board and this court, that was clearly intended to forbid the Board to authorize inclusive tours." *Pan American World Airways, Inc.* v. *Civil Aeronautics Board,* 380 F. 2d 770, 781 (C.A. 2); 1119a-1143a.

As already noted, this Court has granted certiorari to resolve the conflict.

SUMMARY OF ARGUMENT

I. A. It is familiar learning that, where Congress does not define a particular term in a regulatory statute, the regulatory agency created to administer that statute is free to adopt a meaning for such term that is consistent with the statute and that will further the statutory scheme.

Here the word "charter" had been in the governing statute since 1938, and the Board had frequently given differing interpretations thereto, subject only to the significant element of the charter concept, viz., the maintenance of a clear differentiation between group and individually ticketed travel. In defining "charter trips" in Section 101(33) of the Act to include inclusive tour charters under rigorously prescribed conditions, the Board here was simply following this Court's holding under the Motor Carriers' Act in *National Bus Traffic Ass'n* v. *United States,* 352 U.S. 1020, affirming 143 F. Supp. 689 (D. N. J.). Significantly, the Board has several times denied inclusive tour charter applications that omitted in any respect the rigidities of a group itinerary.

Finally, it is significant that, unlike other regulatory agencies, the Civil Aeronautics Board is under an affirmative statutory duty to promote, develop, and encourage air transportation, and that the inclusive tour charter orders now being challenged were adopted for a test period of five years on a designedly experimental basis.

B. The Board's definition of "charter trips" to include inclusive tour charters is consistent with the statute, it preserves the administrative flexibility urged on the Congress by the respondent trunk line carriers, it is consistent with the flexibility preferred by the prevailing House report, and it lacks the rigidity that the Senate's rejected definition of "charter" would have required.

The trunk lines now argue, not that omitting a legislative definition would further administrative flexibility, which was their position before the committees, but rather that the considered omission of such a definition has resulted as a matter of law in precluding administrative flexibility. This about-face, the record shows, was triggered by the Board's order which, following termination of the legislative hearings and the passage of differing versions of the pending measure by House and Senate, directed consideration of the inclusive charter tour issue.

C. On the basis of the normal and usual indicia of legislative intention—the positions of the contending parties, the several Committee reports, the omission of any legislative definition from the Act—it is clear that the Board was free to vary its definition of "charter" from time to time.

D. But the court below improperly and impermissibly varied the clear import of the legislative history because of remarks made on the floor of both houses that were inconsistent with both the Conference Report and the language of the statute.

This was improper, because at variance with multiple warnings by this Court not to rely on remarks of the measure's opponents, particularly where the legislation in question involved accommodation between strong economic forces locked in conflict.

The remarks made in the House just before the Conference Report was adopted reflect an outside source and

are self-contradictory. The remarks made in the Senate similarly reflect an outside source, are inconsistent with what the Committee Chairman said there, are not based on any of the antecedent legislative materials, and plainly were never approved by the House. What is involved, therefore, is synthetic legislative history, fashioned with a view to favorable use in the future, which cannot properly be given any weight whatever in ascertaining the meaning of the statute.

The District of Columbia Circuit was accordingly right in holding that nothing said on the floor of either house at the time of the adoption of the Conference Report precluded either split charters (*American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349) or inclusive tour charters for domestic operations (*American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939).

Affirmance here would not only unsettle the law, it would force American residents seeking to fly abroad on inclusive tour charters to use foreign supplemental air carriers exclusively.

II. Since the orders now being challenged were approved by the President, they are not subject to judicial review under the doctrine of *Chicago & Southern Air Lines* v. *Waterman S. S. Corp.*, 333 U.S. 103, a decision which, though rendered by a closely divided Court, has never been reconsidered here. But the court below, following the District of Columbia Circuit, held that the *Waterman* doctrine does not preclude judicial review to determine whether the Board had statutory power to make the order it did.

That view espouses in significant part the view of the *Waterman* minority that the Court rejected. But it is not necessary to determine the question of power in any situation where the case under consideration is not appropriate

for the exercise of the power, assuming it to exist. *Ex parte Bakelite Corp.*, 279 U.S. 438, 448.

Here none of the challenges made to the present orders by the respondents have any merit. Point I shows that the substantive challenge is not well taken, while the procedural objections raised by the respondents in the court below are quite devoid of substance.

Accordingly, without reaching the *Waterman* doctrine, the Court may properly sustain the Board here on the footing that, assuming power to review, the present objections to the orders in question are wholly untenable.

ARGUMENT

Despite the circumstance that the words "charter trips" in Section 101(33) of the Act were never defined or limited by Congress, in part certainly because the respondent trunk line carriers argued strongly against any legislative definition thereof, the court below has held, in reliance on demonstrably unreliable legislative history, that Congress so far intended to curb the cognizant regulatory agency's powers as to forbid carefully restricted charters of entire aircraft where such charters included members of an indivisible group on an all-expense tour.

We shall show that, on familiar principles, the deliberate refusal of Congress to define the scope of "charter" meant that the Civil Aeronautics Board was free to expand and contract the content of that word on a case-to-case basis, in the normal and usual context of administrative regulation; that the definition it evolved after protracted hearings, circumscribed by detailed if not indeed onerous restraints, was not only consistent with the statute but effectuated the Congressional intention of precluding supplemental air carriers from regularly engaging in individually ticketed operations; and that the court below, in finding in the legislative materials a blanket prohibition against inclusive tour charters that neither the language

of the statute nor the terms of any of the committee reports supported, was guilty of disregarding this Court's repeated admonitions as to the dangers of relying on floor debates to vary the meaning of an Act of Congress as explained in the committee reports.

Indeed, we shall demonstrate when and why the respondent trunk line carriers, who had urged on both Congressional committees the desirability of leaving the Board free to vary its administrative definitions of "charter" from time to time, in preference to having Congress define "charter" by statute, suddenly did an about-face, so that, below and in this Court, they now argue that the Board was forbidden by law to include inclusive tour charters within the statutory words "charter trips."

I. THE BOARD'S STATUTORY MANDATE TO AUTHORIZE "CHARTER TRIPS IN AIR TRANSPORTATION * * * TO SUPPLEMENT SCHEDULED SERVICES" IS AMPLY BROAD ENOUGH TO ENCOMPASS THE INCLUSIVE TOUR CHARTER AUTHORITY HERE IN QUESTION

A. Whenever a Particular Term in a Regulatory Statute Is Not Defined by the Legislature, the Regulatory Agency Is Free To Adopt a Meaning That Is Consistent With the Statute and That Will Effectuate the Statutory Purpose.

It is familiar learning that, where Congress does not define a particular term in a regulatory statute, the regulatory agency created to administer that statute is free to adopt a meaning for such term that is consistent with the statute and that will further the statutory scheme.

As this Court said in *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 220:

> "Congress did what experience had taught it in similar attempts at regulation, even in fields where the subject-matter of regulation was far less fluid and dynamic than radio. The essence of that experience was to define broad areas for regulation and to establish standards for judgment adequately related in their application to the problems to be solved."

And again in *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 203:

> "The Communications Act must be read as a whole and with appreciation of the responsibilities of the body charged with its fair and efficient operation. The growing complexity of our economy induced the Congress to place regulations of businesses like communication in specialized agencies with broad powers. Courts are slow to interfere with their conclusions when reconcilable with statutory directions."

Here, as in the very recent case of *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1, the agency determination "is entitled to acceptance unless it lies outside the range of permissible choices contemplated by the statute;" courts should take that determination "as their starting point and * * * set aside this determination only when it lacks reasonable support in relation to the statutory purpose * * *." And, only the other day, the Court reversed a court of appeals that "indulged in an unwarranted incursion into the administrative domain." *Securities and Exchange Comm.* v. *New England Elec. System*, No. 305, this Term, decided March 5, 1968, p. 5 of slip opinion.

By way of background it should be noted that, although the word "charter" has been in the governing statute since 1938 (Section 401(f) of the Civil Aeronautics Act of 1938, c. 601, 52 Stat. 973, 989), it has never been defined by Congress; as has been se[illegible] (*supra*, pp. 7-10), the respondents' representative strongly urged Congress not to adopt a statutory definition; the Senate's version of the bill, which contained such a definition, was rejected by the House, which proposed to leave the definition of charter to the Board, as before; and the Conference Report in this respect agreed completely with the House and eliminated the Senate's statutory definition.

On many occasions before passage of the 1962 Act, the Board had defined "charter" in many varying contexts—

as an incident of regulating the fares and/or operating authority of the scheduled route carriers (*Free and Reduced Rate Transportation,* 14 C. A. B. 481, 489, 510; *Pan American World Airways IATA Agreements,* 23 C. A. B. 275, 280-281; *IATA Agreements, Group Excursion Fares,* 26 C. A. B. 755, 756), of foreign route carriers (*Foreign Off Route Charter Service Investigation,* 27 C. A. B. 196, 202), of supplemental air carriers (*ACTA-IMATA Commercial Charter Exchange Investigation,* 22 C. A. B. 760), and of indirect air carriers (*International Air Freight Forwarders Investigation,* 27 C. A. B. 658, 668-669).

As early as 1958, the Board made it clear that its definition of charter would be governed, not by "conceptual niceties," but rather by the "essential elements" of this type of air transportation. *International Air Freight Forwarders Investigation,* 27 C. A. B. 658, 668-669. And, within that framework, the definition has been frequently modified to promote the overall statutory objectives in what is assuredly one of today's most dynamic industries. Indeed, these rules were re-examined, redefined, and amplified almost annually beginning in 1950.[9]

---

[9] 1950: CAB Statement of Action on Applications for Permission to Carry Groups on Special Transatlantic Charter Trips, May 20, 1950; issued wth CAB Press Release 50-28.

Policy Statement on Transatlantic Air Travel for 1950, December 6, 1949; issued with CAB Press Release 49-99.

1955: The 1955 Transatlantic Charter Policy, 20 C.A.B. 782 (1955).

Regulation Policy Statement No. 1, 20 Fed. Reg. 4117 (1955), effective May 25, 1955, codified as amended as 14 C.F.R. 399.

1957: Regulation Policy Statement No. 2, 22 Fed. Reg. 2241 (1957), effective April 4, 1957, codified as 14 C.F.R. 399.28.

[continued overleaf]

Even prior to the award of inclusive tour authority, the Board's charter regulations sanctioned the charter of aircraft by persons offering space thereon to the general public as part of a group travel program. Section 295.2 (k) and 295.2(m) of the Board's Regulations (see 903a for the first and 14 C.F.R. for the second) and predecessor provisions have expressly authorized the supplemental carriers to charter aircraft to persons responsible for organizing study tours in which the participants engage in a formal academic study course abroad. (Sections 208.3(q) and 208.3(r), as they now appear in 14 C.F.R., are to the same effect.) In essential characteristics, there is exact identity between such long-established study tour charters and the inclusive tour charters here challenged.

1958: Regulation Policy Statement No. 3, 23 Fed. Reg. 214 (1958), effective Jan. 7, 1958, codified as 14 C.F.R. 399.28 and 14 C.F.R. 399.29.

Regulation Policy Statement No. 5, 23 Fed. Reg. 7063 (1958), effective November 5, 1958, codified as 14 C.F.R. 399.30.

1959: CAB Econ. Regs. ER-273, 24 Fed. Reg. 4907 (1959), effective June 26, 1959, codified as 14 C.F.R. 295.

1960: Regulation Policy Statement No. 11, 25 Fed. Reg. 5327 (1960), effective June 29, 1960, codified as 14 C.F.R. 399.30.

CAB Econ. Regs. ER-305, 25 Fed. Reg. 5322 (1960), effective June 29, 1960, codified as 14 C.F.R. 295.

CAB Econ. Regs. ER-312, 25 Fed. Reg. 7673 (1960), effective September 9, 1960, codified as 14 C.F.R. 295.33.

1961: CAB Econ. Regs. ER-326, 26 Fed. Reg. 3628 (1961), effective April 28, 1961, codified as 14 C.F.R. 295.

1962: Regulation Policy Statement No. 12, 27 Fed. Reg. 693 (1962), effective February 1, 1962, codified as 14 C.F.R. 399.36.

Regulation Policy Statement No. 13, 27 Fed. Reg. 4732 (1962), effective May 18, 1962, codified as 14 C.F.R. 399.37.

The only restrictions that the Board imposed, in this case as well as in all the others, were those adapted to preserve, in its words, "the significant element of the charter concept," namely, "the maintenance of a distinction between group and individually-ticketed travel" (867a).

It was because the Board maintained that essential distinction that it was successively upheld by the District of Columbia Circuit in the split charter case and in the domestic inclusive tour charter case. *American Airlines* v. *Civil Aeronautics Board,* 348 F. 2d 349; *American Airlines* v. *Civil Aeronautics Board,* 365 F. 2d 939.

In concluding that its existing statutory authority to authorize charter trips was amply broad enough to authorize all expense tours, the Board relied (338a-340a) on this Court's decision in *National Bus Traffic Ass'n* v. *United States,* 352 U.S. 1020, affirming 143 F. Supp. 689 (D. N. J.), which upheld the Interstate Commerce Commission's ruling that a tour operator offering all-expense tours, not distinguishable from those authorized here, was not required to utilize motor carriers who would be authorized by the Commission to sell individual tickets to passengers, but rather was free to utilize motor carriers licensed to engage in charter services.

As the district court said in that case (143 F. Supp. at 695):

> "It must be conceded by the plaintiffs * * * that a preformed group of travelers—for example, the members of a golf team or of an orchestra—may lawfully charter a bus for a tour. The Commission thought that Tauck's patrons, traveling and sightseeing together have a 'community of interest' about the equivalent of that of a preformed group; that, therefore, if a collective contract for transportation be effective for its group by Tauck such a contract may be deemed to be a true 'charter' ".

And again (143 F. Supp. at 696-697):

> "Though the individual membership certificates do entitle each individual Tauck patron to transportation

> and in this sense are 'tickets', a good deal more than bare individual transportation is involved. The tour is attractive because it is a group adventure * * * The important thing is that the Tauck group is a cohesive whole interested in a tour for pleasure, and not in mere transportation."

That decision, it is proper to note, antedated by nearly six years the enactment of Section 101(33) of the Federal Aviation Act.

As we have shown (*supra*, pp. 24-29), the Board's regulations governing inclusive tour charters are very comprehensive and detailed; they may indeed be onerous; but all of their provisions are designed to—and do—effectuate a clear and sharp differentiation between group travel involved in inclusive tour charters, and the individually-ticketed transportation which supplemental air carriers such as petitioners are no longer authorized to offer on a permanent basis.

In the language of the examiner here (111a-112a),

> "Existing all-expense tours, like those which might be offered and sold on a charter basis through travel agents, have appealing features for passengers of a particular temperament, including relative economy of price, the payment of one sum for the entire package, the companionship of likeminded tourists, relief from the burdensome detail of reservations, avoidance of baggage transfers, etc. In the international field there are additional advantages, such as minimizing the necessity for coping with the often cumbersome customs procedures and the difficulties of unfamiliar languages and currencies."

Those findings were adopted by the Board (336a), which added this further explanation of the group character of inclusive tour charters (344a-345a; italics added):

> "The use of the charter mechanism, combined with the restrictions which we are imposing by regulation, necessarily results in a service to the public which is

different in significant respects from that available on scheduled services. In exchange for realizing the price savings accruing from the economies of planeload charter operations, *the charter tour passenger is subjected to the rigidities of a group itinerary,* must be willing to travel and share facilities with strangers, and must agree to the necessary regimentation that is entailed in group travel. Nor will he have the freedom to select from the multiple daily schedules offered by route carriers, but will be confined to predetermined departure and arrival times selected by the tour operator. Moreover, it is clear that the specially tailored type of service to be provided is not one which could practicably be furnished by route carriers on their scheduled operations. * * * For all these reasons, we find that, no less than in the case of traditional planeload charters, inclusive tour charters are 'supplemental' within the meaning of Section 101(33)."

It is significant that, since the adoption of the detailed inclusive tour charter regulations (Part 378, set out in detail, *supra,* pp. 24-29), the Board has already dismissed or denied no less than eight applications for statements of authorization for failure to comply with Part 378.[10]

Of the orders issued by the Board in response to such applications, one of the most significant is that which denied an application for a tour group which proposed to travel together from New York to London, Brussels and Paris, this portion of the journey occupying one week; at Paris the tour members were to disperse on various individual itineraries involving work or study assignments in Europe; and thereafter they would reassemble at Paris about two months later for travel via London to New York. The Board denied that application in its Order E-26222

---

[10] Order E-26222 dated January 4, 1968; Order E-25056 dated April 27, 1967; Order E-24723 dated February 6, 1967; Order E-24661 dated January 23, 1967; Order E-24660 dated January 23, 1967; Order E-24586 dated December 30, 1966; and Order E-24382 dated November 9, 1966.

dated January 4, 1968, because it failed to comply with an essential ingredient of the inclusive tour concept, namely, "planned group travel." The Board thus reaffirmed the requirement of the "rigidities of a group itinerary" in order to distinguish this new program from individually ticketed service.

Two final points should be emphasized.

First, as the examiner pointed out, citing *Braniff Airways* v. *Civil Aeronautics Board,* 147 F. 2d 152 (D. C. Cir.); *American Airlines* v. *Civil Aeronautics Board,* 192 F. 2d 417 (D. C. Cir.); and *Delta Air Lines* v. *Civil Aeronautics Board,* 247 F. 2d 327 (C. A. 5), Section 102 of the Federal Aviation Act (49 U.S.C. § 1302; *infra,* p. 59) imposes affirmative duties on the Board. He said (138a-139a, footnotes omitted):

> "The Board's function under the Act is not simply one of providing a kind of after-the-fact regulation by correcting demonstrated service deficiencies and fulfilling existing service demands shown on a factual record; nor is its role confirmed to that of an impassive arbiter of conflicting private interests. Rather, the Act affirmatively invests the Board with the duty to consider, as being in accordance with the public convenience and necessity, the 'promotion,' 'development,' and 'encouragement' of air transportation. This mandate imposes duties which are peremptory, and in compliance with it the Board, with judicial approval, has experimented widely in authorizing new and largely unchartered operations. And while the Board is not to exercise its certification power in aid of purely private interests, improving the economic strength of an individual carrier or carriers is a legitimate and often utilized consideration where such strengthening is an incident to achievement of the public interest.
>
> "In exercising its developmental responsibilities the Board of necessity must rely to a substantial extent on its evaluation of the future; otherwise, no new and previously untried service would ever be provided.

> The fact that such an evaluation involves liberal amounts of prophesy and judgment does not make it any less firm a basis to support certification, for the provisions of the Act embodying the declaration of policy 'are as much an enactment by Congress as is any other section of statute.' What is essential is that the record contain a 'hard core of factual possibility' which will undergird the exercise of a particular judgment."

Second, the orders now being challenged are frankly and designedly experimental, to provide a test period of from two to five years (349a; *supra,* pp. 21, 28-29).

B. The Board's Definition of "Charter Trips" to Include Inclusive Tour Charters Is Consistent With the Statute and Preserves the Administrative Flexibility Urged on the Congress by the Respondent Trunk Lines

The words "charter trips" in Section 101(33) are not defined in the Act. But as the Tauck Tours case (*National Bus Traffic Ass'n.* v. *United States,* 352 U.S. 1020, affirming 143 F. Supp. 689 (D. N. J.)), had been decided some six years earlier, it is appropriate to invoke the rule—or, at very least, the presumption—of statutory construction that when Congress used the words "charter trips" in 1962 it intended them to carry over the judicial interpretation of "charter" in the Interstate Commerce Act. E.g., *United States* v. *Merriam,* 263 U.S. 179, 187.

It is particularly to be recalled that the trunk lines, such as respondents, strongly urged both Committees of Congress not to define "charter" but to leave that definition to the Board in the interest of administrative flexibility (*supra,* pp. 7-10); and that the House Committee, responsive to those views, rejected the Senate's definition of charter—passed by that body before the House Committee reported—and instead concluded that "authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported

bill." H. R. Rep. No. 1177, 87th Cong., 1st Sess., p. 11; *supra,* p. 13.

The bill as passed by the House contained no limitation on the Board's power to define "charter" from time to time, while the bill as twice passed by the Senate gave the Board no leeway whatever: In the Senate version, a charter by definition included "a group on an all-expense-paid tour" (*supra,* p. 11), which the Committee report noted was embraced within "the traditional concept of charter" (*supra,* p. 12).

In conference, the Senate definition was dropped; in the Conference Report, this circumstance was not specifically mentioned. Accordingly, the statute as passed left the Board free as before to narrow or broaden its charter concepts, and in the light of the Tauck Tours case that concept, plainly enough, could properly embrace all-expense tours. In short, the 1962 Act gave the Board all of the flexibility for which the trunk line carriers had contended, and which the House Committee had recommended.

Now, however, the trunk lines have changed their position, and are arguing against flexibility. Their present contention is, and these new views were adopted by the court below, not that omitting a legislative definition of charter would further administrative flexibility, but rather that the considered omission of such a legislative definition has precluded administrative flexibility as a matter of law.

This startling about-face can be explained by the relationship between the chronology of the legislation and that of the administrative proceedings giving rise to the orders now being challenged.

Mr. Tipton on behalf of all the trunk lines (including the present three respondents) wrote the House Committee on June 30, 1961, in opposition to any definition of "charter."

House Hearings, pp. 239-243, quoted in part at pp. 7-8, *supra*.

On the same day, he testified before the Senate Committee (Senate Hearings, pp. 181, 193), after which the Chairman announced that the record would be held open one week to receive amplifying statements (p. 274). Mr. Tipton's statement, entitled "THERE IS NO PRESENT NEED FOR A DEFINITION OF 'CHARTER' IN THE FEDERAL AVIATION ACT," excerpts from which have already been quoted (*supra*, pp. 9-10), appears immediately afterwards (Senate Hearings, pp. 274-278). Accordingly that statement could not have been prepared later than July 7.

Then came the event that triggered the trunk lines' somersault. On October 18, 1961, in the *Transatlantic Charter Investigation*, which was under way while the differences between the House and Senate versions of the supplemental air carrier bill still remained unresolved, the Board placed at issue the question whether all-expense tour charters should be authorized; it said (646a-647a):

> "On the other hand, we cannot agree that the proposals in this proceeding should be limited to the traditional concept of transatlantic charters or to charters as defined in Part 295. However, we would expect such proposals to fall within the broadly accepted meaning of charters, viz, the lease of an entire vehicle on a time, mileage, or trip basis. This would not preclude proposals which contemplate charters by professionals engaged in the formation of groups for transportation (travel agents) currently prohibited under Part 295 of the Economic Regulations. In other words, the chartering of an aircraft by a travel agent and the offering by such agent to the general public of all-expense group tours would be within the scope of the issues in this case."

From that moment forward, when the trunk lines first had reason to fear that the Board's "flexibility" might be exercised in favor of the supplemental air carriers

rather than against them, the trunk lines changed their tune. Since that time the trunk lines have contended that, when Congress acceded to their urging not to define "charter" in the Act, this was the operative circumstance that froze for all time the Board's earlier definition of the scope of a charter—and this without a single word on that subject either in the Act or in the Conference Report.

We shall now proceed to demonstrate that the District of Columbia Circuit was correct in holding that the legislative history of the 1962 Act does not support the trunk lines' changed position, and that the court below committed egregious error in deciding the contrary.

C. As a Matter of Straightforward Reading of Legislative History, It Is Plain That the Refusal of Congress to Define "Charter" Left the Board Quite as Free as Before to Redefine That Term From Time to Time

If we concentrate on the normal and usual indicia of legislative intention, it is plain from the expressed positions of the contending parties, from the several committee reports, and from the omission of any statutory definition from the Act, that the Board was free to vary its definitions of "charter" from time to time. Indeed, it is not difficult to establish that conclusion on a virtually syllogistic basis:

1. The supplemental carriers complained of the Board's restrictive administrative definition of charter and urged a broader and more comprehensive statutory definition; the Senate adopted such a definition, for reasons set forth in the Senate Committee Report (*supra*, pp. 12-13).

2. The trunk lines, satisfied with the course of the Board's rulings in charter cases up to then, urged that no statutory definition be adopted lest the Board's administrative flexibility be thereby impaired; and the House in consequence refused to include any statutory definition, here

also for reasons set forth in the House Committee report (*supra*, pp. 13-14).

3. The Conference Report dropped the Senate's definition, but without comment.

4. The statute speaks only of "charter trips."

Therefore, 5, the Board following passage of the statute retained its existing administrative flexibility to define and redefine "charter," certainly as long as it maintained a discernible distinction between charter travel and individually ticketed travel. Q. E. D. And the District of Columbia Circuit, reviewing the legislative history of two separate occasions at the instance of the present respondents, has arrived at this precise conclusion. *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349; *American Airlines* v. *Civil Aeronautics Board*, 365 F. 2d 939.

D. The Court Below Improperly and Impermissibly Varied the Clear Import of the Legislative History Because of Remarks Made on the Floor That Were Inconsistent With Both the Conference Report and the Language of the Statute

The heart of the error of the court below lies in its disregard of warnings frequently voiced by this Court in the course of decisions involving statutory interpretation.

First, this Court has urged caution in relying on casual and scattered remarks emanating from one or the other side in the course of debate on a statute representing a legislative compromise and accommodation between strong economic forces in vigorous conflict. *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 179-180; *Woodwork Manufacturers* v. *NLRB*, 386 U.S. 612, 619; *Carpenters' Union* v. *Labor Board*, 357 U.S. 93, 99-100. Here the 1962 Act was, as has been shown in detail, the legislative culmination of years of struggle between the trunk lines and the supplemental carriers.

Second, this Court has frequently warned against relying on the views of legislative opponents of a measure. *Woodwork Manufacturers* v. *NLRB,* 386 U.S. 612, 639-640; *Labor Board* v. *Fruit Packers,* 377 U.S. 58, 66; *Schwegmann Bros.* v. *Calvert Distillers Corp.,* 341 U.S. 384, 394-395. Here, as will be shown, a good many of the restrictive remarks deemed controlling by the court below emanated from members of Congress hostile to the supplemental carriers.

Third, the report of the house whose version was ultimately adopted is more persuasive of the intended meaning of the bill. See *Steiner* v. *Mitchell,* 350 U.S. 247, 254. Here the views of the House of Representatives prevailed in the 1962 Act, and consequently the explanation in the House Committee Report, which stated that "authority to define charter services should be left, as at present, with the Board," is entitled to the greatest weight.

And, fourth, opinions of particular members at variance with the Committee reports are not to be taken as expressing the Congressional purpose. *United States* v. *Wrightwood Dairy Co.,* 315 U.S. 110, 125.

With those observations by way of background, we turn to what was said on the floor at the time of the adoption of the Conference Report to ascertain whether any of those remarks were competent to vary the plain scope of the statute as interpreted in the Conference Report or in the prevailing Committee Report.

Taking the House first, we may properly discount anything said there by Mr. Walter (*supra,* page 15), because this gentleman so far opposed the supplemental carriers that he introduced a bill that would have eliminated them completely from the national air transportation system. H. R. 11132, 87th Cong., 2d sess.

The comments made by Mr. Williams (*supra,* page 16), "It is presumed that they [the Board] will use the same

definition they have been using throughout the years," and that, without any statutory definition of charter, "That definition will be the one which is presently in effect under a regulation of the Civil Aeronautics Board," involve, it is submitted, a *non sequitur*. Not only were those comments quite inconsistent with what Mr. Harris said, to the effect that "the regulatory agency needs some flexibility" (*supra*, p. 16), but, as has been seen (note 9 at pp. 37-38 *supra*), the Board had been redefining "charter" virtually on an annual basis.

In this connection it is also significant that the statement Mr. Harris read, and the speech Mr. Collier made, are identical, word for word.

Mr. Harris was reading a prepared statement, Mr. Collier used the same statement as the substance of a speech (*supra*, pp. 16-17). Obviously, what both are recorded as saying had a common outside source—a classic example of manufactured legislative history, of legislative history made with a view to its favorable use in the future. Compare *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384.

Consequently the Harris-Collier statement is entitled to little if any weight, quite apart from its internal inconsistencies, which derive from the contrast between its advocacy of flexibility in one paragraph and its emphasis on the existing concept of charter in another.

If, as four members of the six constituting the majority in *United States* v. *Florida*, 363 U.S. 121, 132, urged, Congress looks to the text of the statute rather than to the fine print, it is extremely unlikely that the 338 Representatives who approved the Conference Report, simply because of what Messrs. Williams and Harris said, considered that the new Act was in consequence freezing for all time the then current administrative definition of "charter." Far from there being any legislative enactment of settled agency

construction, the formal reports of the House Committee emphasized flexibility—and the Conference Report significantly failed even to intimate inflexibility. In those circumstances, neither Mr. Williams' "It is presumed," etc., nor the statement that was twice read on the floor, amount to a legislative straitjacket that would forever paralyze the Board's future treatment of charters—particularly when one considers the Board's very fluid practice in that area (*supra*, note 9 at pp. 37-38).

The remarks made in the Senate when the Conference Report was considered reflect a similar contrast and inconsistency between flexibility and rigidity.

Chairman Monroney emphasized the need for flexibility, pointing out that the Senate's definition of charter would have precluded split charters, a concept that he saw as desirable in view of the trend towards larger aircraft (*supra*, pp. 17-18).

Senators Cotton, Scott and Thurmond, on the other hand, presented an opposite view. Senator Scott, differing with the Chairman, asserted that the bill as agreed to in conference precluded split charters (108 Cong. Rec. 12284). And all three urged, with varying emphasis, that the Board was required to adhere to existing charter concepts, and that it was specifically forbidden to authorize charters for all-expense tours (108 Cong. Rec. 12283-12285).

We submit that what these three Senate conferees said can be given no weight, much less controlling significance, and this for a number of reasons.

First, their remarks are at variance with what was said about flexibility by both Committee Chairmen, Senator Monroney and Mr. Harris. Certainly it cannot be argued that these three conferees were more properly "the managers" or "in charge of the bill" than the two chairmen; any such assumption simply disregards legislative realities.

Second, obviously nothing said on the floor of the Senate came to the attention of the 338 House members who voted to adopt the Conference Report on the same day; those members were voting what appeared in the Conference Report, and—at least presumptively—what had earlier appeared in the House Report. Their action on the House side plainly did not involve ratification of a few Senators' remarks that were, on their face, at variance with the printed materials actually under consideration.

And, third, the remarks of the three Senate conferees are not competent to vary the terms of either the Conference Report or of the statute itself, which leave no room whatever for any such limitation as those Senators expressed. There will on occasion be scope for difference of opinion as to whether a Conference Report is competent to deflect the apparent meaning of an Act of Congress; that was the issue on which this Court divided in *Commissioner* v. *Acker*, 361 U.S. 87. But floor remarks can never vary both the Conference Report and the Act. This is not a situation where the floor debates clarify or illumine a point left ambiguous at best in the Conference Report, the situation in the decisions relied on by the court below—*First Nat. Bank* v. *Walker Bank*, 385 U.S. 252, 258-260; *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 320-323. Here the precise contrary appears. Here the floor discussion seized on by the court below not only created an ambiguity not therefore present, it flatly contradicted the plain meaning of the Conference Report. No decision of which we are aware—other than the one now under review—sanctions such distorting use of floor debates.

Finally, the combination of three tell-tale factors—the similarity of the three conferees' remarks, the complete lack of any foundation for the substance of those remarks anywhere in the antecedent legislative materials, and the striking inconsistency between those remarks and those materials—strongly suggests, here also, not only a common

outside source but also its corollary, the synthetic legislative history carefully formulated with an eye to the future.

In short, not to labor the matter in more detail, the conclusion is inescapable that the court below applied inadmissible standards of legislative interpretation, and thus gave utterly improper scope to scattered remarks in one house of Congress, remarks all too clearly reflecting views not derived from the legislative materials, in order to limit the unrestricted powers in which the statute had advisedly confirmed the regulatory agency.

Accordingly, when the split charter came before the District of Columbia Circuit, that tribunal sustained the Board, saying (*American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354):

> "We are unable to conclude that the term charter trips has a fixed meaning or that Congress intended to restrict the Board to a definition of one aircraft-one charter. We conclude Congress intended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs and changing aircraft; whatever the limits on the Board's power of definition, those limits are not breached by a definition which permits two groups to charter one half an aircraft each. We can find nothing in the statute or the legislative history or in principle that should freeze the definition of 'charter' to the capacity of standard aircraft of a particular vintage. We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions. In today's swift engineering developments as to size and speed of aircraft a definition embalmed, for example, in such origins as the admiralty law growing out of the sailing vessel era would be an unreasonable and unnecessary restraint on the Board and one we do not find in the statute or its history."

Similarly, the same court sustained the validity of domestic inclusive tour charters after careful review of the legislative history that we have just presented. It said (*American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939, 948-949):

> "We believe that, if the statements of the floor managers are considered in the light of the foregoing analysis, and sight is not lost of the fact that the legislators did not in fact have the Board's regulations before them when the Act was passed, the Board's interpretation of its statutory power comports with the overall statutory intention of Congress. Although specific conflict does exist to some degree between the statements on the floors of the houses, and the Act itself and the House committee report, much of that conflict is dissipated by the above analysis of the evil apprehended by the legislators and the measures adopted by the Board to prevent its occurrence. Any remaining conflict must give way to the generally accepted maxim of statutory construction that reports by the legislative committees responsible for formulating the legislation must take precedence in event of conflict over statements in the legislative debates on the floors of the houses of Congress. * * *"

It seems proper to consider the consequences that would follow affirmance of the judgment below.

Such an outcome, quite apart from the harm it will do to established concepts of judicial review and of statutory construction, will have an adverse effect on the balance of payments problem as well.

For, in the event of affirmance, the present petitioners will be forbidden to conduct overseas inclusive tour charters, and as a matter of *stare decisis*, so will every other American supplemental air carrier.

But two foreign charter carriers now have 5-year authority to carry passengers from this country to Europe on inclusive tour charters. *Caledonian Airways (Prestwick) Ltd.*, Order No. E-25017, approved by the President April

19, 1967; *Transavia, N. V.*, Order No. E-26136, approved by the President December 16, 1967.[11]

Consequently American residents of limited means who wish to see Europe by the most inexpensive and convenient way, i.e., via an inclusive tour charter, will not be able to do so on an American supplemental air carrier, they will perforce be required to travel on foreign-flag charter carriers.

The demand for inclusive tour charter accommodations is strong, and it is growing; as the examiner said (111a), "it is clearly apparent that such traffic is nowhere near its true potential." In foreign countries, inclusive tour charter services "have enjoyed wide public acceptance and have exhibited remarkable growth" (113a; see also, generally, 113a-124a).

If American residents travelling to Europe by air on inclusive charter tours are restricted to foreign-flag charter carriers, which would be the result in the event of affirmance in this case, then some part of those residents' expenditure, though not much, will remain here, to be applied to the carriers' expenses in this country; but the profit from the operation will, necessarily, be transmitted to the carriers' headquarters abroad.

So the economic variable in the ultimate result to be reached in the present case is simply a question whether a greater or a smaller portion of the money paid by the American tourist for an inclusive charter tour will remain in the United States.

---

[11] *Wardair Canada, Ltd.*, Order No. E-26137, approved by the President December 16, 1967, has authority for inclusive tour charters to Canada; while *Sudflug, Suddeutsche Fluggesellschaft m.b.H.*, Order No. E-24697, approved by the President January 30, 1967, has authority to conduct inbound inclusive tour charters from Europe to the United States. See *Pan American World Airways, Inc.* v. *Civil Aeronautics Board*, D. C. Cir., Nos. 20860 and 21149, decided January 31, 1968.

II. THERE IS NO OCCASION IN THIS CASE TO REEXAMINE THE SCOPE OF THE WATERMAN DOCTRINE

In *Chicago & Southern Air Lines* v. *Waterman S. S. Corp.*, 333 U.S. 103, a closely divided Court held that Board orders involving international operations, which under § 801 of the Act (49 U.S.C. § 1461; *infra*, pp. 60-61) required Presidential approval as a condition precedent to their taking effect, were not subject to judicial review, essentially because they involved foreign affairs, an area in which the President alone could speak for the Nation.

In the 20 years since that case was decided, its doctrine has not been reexamined here, and *Waterman* has been cited by this Court only by way of illustration.

In the lower Federal courts, however, the *Waterman* doctrine of non-reviewability has been substantially narrowed. The District of Columbia Circuit in the split charter case held that it did not preclude judicial review where the issue was whether the Board had statutory power to make the order that it did (*American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349), and in the inclusive tour charter cases, both the District of Columbia Circuit as well as the court below followed the same rationale. *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939 (D. C. Cir.); *Pan American World Airways* v. *Civil Aeronautics Board*, 380 F. 2d 770 (C.A. 2).

We cannot forbear to remark that the District of Columbia Circuit and the Second Circuit have both, certainly in significant part, espoused the reasoning of the minority in *Waterman* that the Court rejected. But, for reasons about to be stated, we believe that there is no occasion now to reexamine the scope of the *Waterman* doctrine with a view either to limiting or to reaffirming it.

First, as we have shown at great length in Point I above, the Board clearly had power to authorize these petitioners to make inclusive tour charters; there is no need even to summarize, much less repeat, what we have already argued at length.

Second, the alleged procedural deficiencies advanced by the respondents below are quite without substance and indeed verge on the frivolous, as we can easily demonstrate.

Respondents contended below that the Board erred (1) in awarding inclusive tour authority without calling for a further hearing as allegedly required under the doctrine of *Civil Aeronautics Board* v. *Delta Air Lines*, 367 U.S. 316, and (2) in adverting to traffic and financial reports regularly filed by respondents and to other data officially noticed by the Board.

Those contentions are quite untenable, for a number of reasons.

First, inasmuch as they were not raised before the Board but were first adduced in the court below, they are barred by Section 1006(e) of the Act (49 U.S.C. § 1486(e); *infra*, p. 61).

Second, the Board here did not terminate existing authority embodied in a certificate that had already been issued, it awarded new authority as its final action in a continuing proceeding in which full hearings had been held. The *Delta Air lines* case is accordingly entirely inapplicable.

Third, respondents pointedly failed to specify in their briefs below the alleged prejudicial errors committed by the Board, or the contrary factual showing that respondents would have been prepared to make. Cf. 5 U.S.C. § 556(e).

For further details concerning these contentions, we adopt and incorporate by reference all that the Board has said in Point II of its brief in No. 946.

The result is that, even assuming solely for purposes of argument that the Board's orders being challenged in the present proceeding are as fully subject to judicial review as though they had involved only domestic operations, they would still require affirmance on their merits, with the consequent reversal of the judgment below.

Accordingly, this is a case for the application of the technique of *Ex parte Bakelite Corp.*, 279 U.S. 438, where petitioners sought a writ of prohibition. A unanimous Court left open the issue of its power to grant the relief requested, because clearly of opinion that such relief should not be granted. The Court said (p. 448, footnotes omitted):

> "'The power of this Court to issue writs of prohibition never has been clearly defined by statute or by decisions. And the existence of the power in a situation like the present is not free from doubt. But the doubt need not be resolved now, for, assuming that the power exists, there is here, as will appear later on, no tenable basis for exercising it. In such a case it is admissible, and is common practice, to pass the question of power and to deny the writ because without warrant in other respects.'"

So here: The Court may properly pass the question of judicial power under the *Waterman* doctrine, and to sustain the Board on the footing that the present challenges to the international orders involved herein, both substantive and procedural, are wholly untenable and without warrant.[12]

---

[12] Interestingly enough, this was the precise course pursued by the District of Columbia Circuit in a recent contest between two of the respondents here and a foreign charter air carrier. *Pan American World Airways* v. *Civil Aeronautics Board,* Nos. 20860 and 21149, decided January 31, 1968, pp. 3-4 and note 4 of slip opinion.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment below should be reversed, with instructions to affirm the Board's orders.

JERROLD SCOUTT, JR.,
888 - 17th Street, N.W.,
Washington, D. C. 20006,
Counsel for Petitioners World Airways Inc., and Purdue Aeronautics Corp.,

CLAYTON L. BURWELL,
1815 H Street, N.W.,
Washington, D. C. 20006,
Counsel for Petitioner Trans International Airlines, Inc.,

LEONARD N. BEBCHICK,
818 - 18th Street, N.W.,
Washington, D. C. 20006,
Counsel for Petitioner Saturn Airways, Inc.,

GEORGE BERKOWITZ,
233 Broadway,
New York, N. Y. 10007,
Counsel for Petitioner Capitol International Airways, Inc.,

STEPHEN D. POTTS,
910 - 17th Street, N.W.,
Washington, D. C. 20006,
Counsel for Petitioner American Flyers Airline Corp.

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Ave., N.W.,
Washington, D. C. 20006,
Of Counsel for all Petitioners.

MARCH 1968.

APPENDIX

Statute Involved

The pertinent provisions of the Federal Aviation Act of 1958 as amended are as follows:

1. *§ 101. Definitions* [49 U.S.C. § 1301]

As used in this Act, unless the context otherwise requires—

* * * * *

(33) "Supplemental air transportation" means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to section 401(d)(1) and (2) of this Act.

2. *§ 102. Consideration of matters in public interest by Board* [49 U.S.C. § 1302]

In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to be recognized and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or

advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

3. *§ 401. Certificate of public convenience and necessity —Essentiality* [49 U.S.C. § 1371]

(a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

* * * * *

(d)(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

4. § 801. *The President of the United States* [49 U.S.C. § 1461]

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate

authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

5. § 1006. *Judicial Review—Orders subject to review; petition for review* [49 U.S.C. § 1486]

(a) Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

* * * * *

(e) The findings of facts by the Board or Administrator, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board or Administrator shall be considered by the court unless such objection shall have been urged before the Board or Administrator or, if it was not so urged, unless there were reasonable grounds for failure to do so.

APPENDIX TO PETITONERS' BRIEF
LEGISLATIVE MATERIALS

Supreme Court of the United States

OCTOBER TERM, 1967

No. 800

WORLD AIRWAYS, INC., ET AL., *Petitioners,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 946

CIVIL AERONAUTICS BOARD, *Petitioner,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

No. 969

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC., *Respondents.*

INDEX TO LEGISLATIVE MATERIAL

	Pages
Senate Bill, S. 1969	1b
House of Representatives Bill, H. R. 7318	7b
House of Representatives Bill, H. R. 7512	13b
House Report No. 1177	17b
Senate Report No. 688	91b
Conference Report, House Report No. 1950	173b
Hearings in the House of Representatives	207b
Hearings in the Senate	217b
Congressional Record:	
House of Representatives	229b
Senate	234b
Public Law 86-661	240b

LEGISLATIVE MATERIALS

Senate Bill, S. 1969

87th Congress, 1st Session

A BILL To amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and inserting therein two new paragraphs to read as follows:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act."

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read:

"(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the service of a supplemental air carrier and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to supplemental air transportation, including the nature of the public need found to exist and the extent of the obligation imposed on an air carrier engaging in such air transportation to provide the service authorized by the certificate. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

"(ii) If any applicant who makes application for a certificate for supplemental air transportation within thirty days after the date of enactment of this paragraph shall show—

"(A) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted

January 28, 1959, or order E-14196, adopted July 8, 1959, or that it or its predecessor has received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960, 74 Stat. 527;

"(B) that between the effective date of the certificate or interim operating authority and the date of enactment hereof, the applicant or his predecessor in interest lawfully performed either (1) any portion of the service authorized by the certificate or interim operating authority, or (2) any operations for the Military Establishment of the United States authorized by the Board; and

"(C) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this paragraph, and is held by the original grantee or has been transferred with Board approval pursuant to section 401(h); *Provided,* That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue a certificate hereunder if it approves the transfer pursuant to section 401(h) of this Act;

the Board, upon proof of such facts only, shall issue a certificate authorizing such applicant to engage in supple-

mental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to the terms, conditions, and limitations attached thereto for such period as the Board deems proper: *Provided,* That this period shall not extend beyond the effective date of an order of the Board denying renewal of the certificate or interim operating authority in a renewal proceeding pending at the time of enactment hereof."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act is amended by adding the following text: "A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board in specifying the service to be rendered under a certificate for supplemental air transportation from placing such limitations on such certificate as it may find to be necessary to assure that the services are limited to supplemental air transportation: *Provided,* That the Board may not impose such limitations upon certificates issued pursuant to paragraphs (1) and (2) of subsection (d)."

SEC. 4. (a) Any air carrier entitled to certification under section 401(d)(3)(ii) of the Federal Aviation Act, as amended herein, may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to said section 401(d)(3)(ii) within said thirty days, until the Board

has acted upon such application. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had an application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority until the effective date of an order of the Board disposing of such application. Any carrier whose operating authority in interstate air transportation under Board order E-9744 is continuing solely by virtue of a judicial stay of a Board order, insofar as such order would otherwise terminate such operating authority, is hereby authorized to continue to operate, subject to all conditions and limitations contained in order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to order E-13436 or order E-14196 or against the holder of interim authority issued under section 1(1) of Public Law 86-661 pending before the Board on the date of enactment of Public Law 86-661 or this Act, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or

interim authority or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air carrier for violations occurring prior to the issuance to such carrier of a certificate of public convenience and necessity for supplemental air transportation under paragraph (3)(i) or (ii) of section 401(d) of the Federal Aviation Act as amended by this Act may be imposed upon a certificate issued to such air carrier under such paragraph.

(c) Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 et al., shall be deemed to have been finally disposed of by the Board insofar as said application seeks authority to engage in interstate air transportation, (1) upon the effective date of a certificate of public convenience and necessity issued to such carrier pursuant to the provisions of section 401 (d)(3)(i) or (ii) of the Federal Aviation Act; (2) upon the effective date of an order of the Board denying any application of such carrier for a certificate of public convenience and necessity under section 401(d)(3)(i) or (ii); or (3) in the event such carrier was issued authority by order E-13436 or E-14196 or interim authority under Public Law 86-661 and fails to file application for a certificate pursuant to said section, on the thirty-first day after the date of enactment of this Act.

House of Representatives Bill, H. R. 7318
87th Congress, 1st Session

A BILL To amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and inserting therein two new paragraphs to read as follows:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read:

"(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier,

the Board may issue a certificate authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the service of a supplemental air carrier and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to supplemental air transportation, including the nature of the public need found to exist and the extent of the obligation imposed on an air carrier engaging in such air transportation to provide the service authorized by the certificate. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

"(ii) If any applicant who makes application for a certificate for supplemental air transportation within thirty days after the date of enactment of this paragraph shall show—

"(A) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or that it or its predecessor has received interim

operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960, 74 Stat. 527;

"(B) that between the effective date of the certificate or interim operating authority and the date of enactment hereof, the applicant or his predecessor in interest lawfully performed either (1) any portion of the service authorized by the certificate or interim operating authority, or (2) any operations for the Military Establishment of the United States authorized by the Board; and

"(C) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this paragraph, and is held by the original grantee or has been transferred with Board approval pursuant to section 401(h): *Provided,* That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue a certificate hereunder if it approves the transfer pursuant to section 401(h) of this Act;

the Board, upon proof of such facts only, shall issue a certificate authorizing such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to

the terms, conditions, and limitations attached thereto for such period as the Board deems proper: *Provided*, That this period shall not extend beyond the effective date of an order of the Board denying renewal of the certificate or interim operating authority in a renewal proceeding pending at the time of enactment hereof."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act is amended by adding the following text: "A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board in specifying the service to be rendered under a certificate for supplemental air transportation from placing such limitations on such certificate as it may find to be necessary to assure that the services are limited to supplemental air transportation: *Provided*, That the Board may not impose such limitations upon certificates issued pursuant to paragraphs (1) and (2) of subsection (d)."

SEC. 4. (a) Any air carrier entitled to certification under section 401(d)(3)(ii) of the Federal Aviation Act, as amended herein, may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to said section 401(d)(3)(ii) within said thirty days, until the Board has acted upon such application. Any air carrier whose application for certification as a supplemental air carrier is

pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had an application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority until the effective date of an order of the Board disposing of such application. Any carrier whose operating authority in interstate air transportation under Board order E-9744 is continuing solely by virtue of a judicial stay of a Board order, insofar as such order would otherwise terminate such operating authority, is hereby authorized to continue to operate, subject to all conditions and limitations contained in order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to order E-13436 or order E-14196 or against the holder of interim authority issued under section 1(1) of Public Law 86-661 pending before the Board on the date of enactment of Public Law 86-661 or this Act, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or interim authority or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air

carrier for violations occurring prior to the issuance to such carrier of a certificate of public convenience and necessity for supplemental air transportation under paragraph (3) (i) or (ii) of section 401(d) of the Federal Aviation Act as amended by this Act may be imposed upon a certificate issued to such air carrier under such paragraph.

(c) Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 et al., shall be deemed to have been finally disposed of by the Board insofar as said application seeks authority to engage in interstate air transportation, (1) upon the effective date of a certificate of public convenience and necessity issued to such carrier pursuant to the provisions of section 401(d)(3) (i) or (ii) of the Federal Aviation Act; (2) upon the effective date of an order of the Board denying any application of such carrier for a certificate of public convenience and necessity under section 401(d)(3) (i) or (ii); or (3) in the event such carrier was issued authority by order E-13436 or E-14196 or interim authority under Public Law 86-661 and fails to file application for a certificate pursuant to said section, on the thirty-first day after the date of enactment of this Act.

House of Representatives Bill, H. R. 7512
87th Congress, 1st Session

A BILL To amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (32) and (33) as (34) and (35) respectively, and inserting therein two new paragraphs to read as follows:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which limits the holder to performance of (1) unlimited charter operations on a planeload basis for the carriage of passengers and property in interstate, oversea, and territorial air transportation, with the word 'charter' herein being defined as air transportation performed pursuant to an agreement for the use of the entire capacity of an aircraft, (2) individually ticketed passenger or individually waybilled cargo operations in the frequency of one hundred and ninety-two flights per year in the same direction between any single pair of points in any calendar year, in interstate, oversea, and territorial air transportation, and (3) supplemental air carriers shall have the right of first refusal in the operation of all charter trips in interstate, oversea, and foreign air transportation.

The Board shall implement this section by appropriate regulations."

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read:

"(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a temporary or permanent certificate authorizing the whole or any part thereof if it finds that the applicant is fit, willing; and able properly to perform supplemental air transportation as defined herein, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder and if the Board finds after public hearing that such certificate is required by the public convenience and necessity.

"(ii) If any applicant who makes application for a certificate for supplemental air transportation within one hundred and twenty days after the date of enactment of this paragraph shall show (A) that, on such date it or its predecessor in interest, was an air carrier furnishing services between places within the United States authorized by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, to render such service, and that any portion of such service for any class of traffic was performed pursuant to such certificate during such period and (B) that, such certificate had not been revoked or otherwise terminated by the Board prior to the enactment of this paragraph, the Board, upon proof of such facts only, shall issue a cer-

posed by the court until the court shall lift such stay or until the final disposition of the judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to order E-13436 or order E-14196 pending before the Board on the date of enactment thereof, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air carrier of a certificate of public convenience and necessity for supplemental air transportation under paragraph (3)(ii) of section 401(d) of the Federal Aviation Act as amended by this Act may be imposed upon a certificate issued to such air carrier under such paragraph.

tificate or certificates of indefinite duration authorizing such applicant to engage in supplemental air transportation, as defined herein."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act is amended by adding the following text: "A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board from placing such limitations on such certificates as it may find to be necessary to assure that the services are limited to supplemental air transportation as defined herein."

SEC. 4. (a) Any air carrier presently operating in interstate air transportation as a "supplemental air carrier" pursuant to authority received under order of the Board whose application for certification as a supplemental air carrier is pending before the Board or is filed with the Board within a period of one hundred and twenty days from the enactment of this section, may continue to operate in interstate, oversea, and territorial supplemental air transportation as defined herein until the effective date of an order of the Board disposing of such application. Any carrier whose operating authority in interstate air transportation under Board Order E-9744, adopted November 15, 1955, is continuing solely by virtue of a judicial stay is hereby authorized to continue to operate, subject to all conditions and limitations contained in such order or im-

House Report No. 1177
87th Congress, 1st Session

SUPPLEMENTAL AIR CARRIERS

SEPTEMBER 13, 1961.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. HARRIS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H.R. 7318]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 7318) to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert:

That section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and by inserting immediately after paragraph (31) the following new paragraphs:

* Numbers within dashes, used on the right, are the original page numbers of the document. These are the numbers referred to in Petitioners' Brief.

House Report No. 1177

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

SEC. 2. Subsection (d) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is amended by adding at the end thereof the following new paragraph:

"(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to as-

sure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

House Report No. 1177

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(e)) is amended to read as follows:

"TERMS AND CONDITIONS OF CERTIFICATE

"(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

"(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

"(3) A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.

"(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change

schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section.

"(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter trips or any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board."

SEC. 4. Title IV of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"SPECIAL OPERATING AUTHORIZATIONS

"AUTHORITY OF BOARD TO ISSUE

"SEC. 417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—

"(1) that the capacity for air transportation being offered by the holder of a certificate of public con-

venience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

"(2) that there is a temporary requirement for air transportation between two points, one or both of which is not regularly served by any air carrier; and

"(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental air carrier a special operating authorization to engage in air transportation between such points.

"TERMS OF AUTHORIZATION

"(b) A special operating authorization issued under this section—

"(1) shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route;

"(2) shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days; and

"(3) shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

"PROCEDURE

"(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved."

SEC. 5. (a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show—

(1) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States under a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board order E-9744 of November 15, 1955, and has pending before the Board an application

for certification as a supplemental air carrier which was filed prior to July 14, 1960;

(2) that, during the period beginning on the date such certificate was issued or such interim operating authority was conferred by the Board and ending on the date of enactment of this Act, such applicant or his predecessor in interest lawfully performed (A) a substantial portion of the transportation authorized by such certificate or interim operating authority, (B) substantial operations in overseas or foreign air transportation, as a supplemental or large irregular air carrier, authorized by the Board, or (C) substantial operations for the Military Establishment of the United States authorized by the Board;

(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this Act: *Provided,* That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect on or before the date of enactment of this Act, notwithstanding a pending judicial review of such order; and

(4) that such certificate or interim operating authority is held by the original grantee or has been transferred to the applicant with Board approval pursuant to section 401(h) of the Federal Aviation Act of 1958: *Provided,* That application under this section may also be made by a person who on the date of enactment of this Act had on file with the Board an application for

the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue to such person a new interim certificate or new interim operating authority under this section if it approves the transfer pursuant to section 401(h) of the Federal Aviation Act of 1958;

the Board, upon proof of such facts, shall issue a new interim certificate or new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority, or both, and subject to the terms, conditions, and limitations attached thereto, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 authorizing the whole or any part of the transportation covered by the application.

(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show that it or its predecessor has received interim operating authority from the Civil Aeronautics Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's interim authority, and subject to the terms, conditions, and limitations attached thereto, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958

authorizing the whole or any part of the transportation covered by the application.

—4—

(c) A new interim certificate or new interim authority issued under this section shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

SEC. 6. (a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat 527), it may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, until the Board has granted or denied a new interim certificate or new interim authority under section 5 of this Act. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority for thirty days from

the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, until the Board has granted or denied a new interim certificate or new interim authority under section 5 of this Act.

(b) The certificates of public convenience and necessity issued by the Board pursuant to order E-13436 adopted January 28, 1959, and order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the exemption authority issued by the Board under order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under order E-10161 of April 3, 1956, shall terminate on the date of an order of the Board granting or denying a new interim certificate or new interim authority under section 5 of this Act, or if the carrier files no application under section 401(d)(3) of the Federal Aviation Act of 1958 within thirty days from the date of enactment of this Act, at the end of said thirty-day period.

(c) Any air carrier whose operating authority in interstate air transportation under Board order E-9744 is continuing solely by virtue of a judicial stay of a Board order which otherwise would terminate such operating authority, is hereby authorized to continue to operate, subject to the conditions and limitations contained in order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of the judicial review proceeding of such Board order, whichever shall first occur.

House Report No. 1177

SEC. 7. The provisions of this Act shall in no way affect the authority of the Board—

(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board order E-13436 of January 28, 1959, or Board order E-14196 of July 8, 1959, or against the holder of any interim operating authority conferred by the Board under paragraph (2) of the first section of Public Law 86-661 or under Board order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act; or

(2) to institute, on or after the date of enactment of this Act, any enforcement or compliance proceeding or action against the holder of any certificate or interim operating authority referred to in paragraph (1) of this section with respect to any violation of—

(A) the Federal Aviation Act of 1958,

(B) the provisions of such certificate,

(C) the terms of such operating authority, or

(D) the regulations of the Board,

without regard to when such violation occurred.

Any sanction which the Board lawfully could have imposed on the operating authority of the holder of any certificate or interim operating authority referred to in paragraph (1) of this section for any violation referred to in paragraph (2) of this section, which violation occurred prior to

the issuance to such holder of a new interim certificate or new interim authority under section 5 of this Act of the

—5—

issuance to such holder of a certificate of public convenience and necessity to engage in supplemental air transportation under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958, may be imposed on the certificate or other operating authority issued to such holder under section 5 of this Act or under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958.

SEC. 8. Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 and others, shall be deemed to have been finally disposed of upon the date of enactment of this Act.

SEC. 9. Section 901(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)) is amended to read as follows:

"SAFETY, ECONOMIC, AND POSTAL OFFENSES

"SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or order issued thereunder, or under section 1002(i) or any term, condition, or limitation of any permit or certificate

issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided,* That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

"(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of titles IV or VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged."

SEC. 10. Section 902(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(a)) is amended to read as follows:

"GENERAL

"SEC. 902. (a) Any person who knowingly and willfully violates any provision of this Act (except titles III, V, VI,

VII, and XII), or any order, rule, or regulation issued under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise provided in this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense."

SEC. 11. (a) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "TITLE IV—AIR CARRIER ECONOMIC REGULATION" is amended by adding at the end thereof the following:

"Sec. 417. Special operating authorizations.

"(a) Authority of Board to issue.

"(b) Terms of authorization.

"(c) Procedure."

(b) That portion of such table of contents which appears under the heading "Sec. 901. Civil penalties." is amended by striking out

"(a) Safety and postal offenses." and inserting in lieu thereof

"(a) Safety, economic, and postal offenses.".

PURPOSE OF LEGISLATION

This legislation is needed to stabilize the supplemental air carrier industry. The reported bill would do this by giving the Civil Aeronautics Board authority to issue a new type of limited air carrier charter certificate and to grant permits to carriers holding such certificates to conduct, on a temporary basis, individually ticketed service to meet the public needs for air transportation in special situations.

Permanent legislation is needed so that the affected carriers can make longer range plans and financial arrangements for future operations.

As a result of court decisions, the Civil Aeronautics Board now lacks authority to license air carriers to conduct limited operations to supplement the services provided by the scheduled route carriers. The reported bill provides a means of accomplishing this without undermining the financial stability of the scheduled route carriers, a situation which could result in the curtailment of essential service or calls for additional subsidy, or both.

SUMMARY OF REPORTED BILL

The reported bill would—

(1) Authorize the Board to issue certificates to supplemental carriers to conduct charter operations;

(2) Provide a method whereby holders of supplemental certificates may furnish individually ticketed service on a temporary basis under regulations of the Board;

(3) Permit the Board to expedite procedures in the issuance of special operating permits authorizing such temporary service;

(4) Grant interim operating authority in the nature of grandfather rights to permit operations until the Board can pass upon applications for new certificates provided for by this legislation;

(5) Permit the Board to impose civil penalties for violations of the economic provisions of existing law and regulations issued thereunder, thus providing an effective method of deterring illegal operations detrimental to the public interest, which have penalized carriers operating in compliance with existing law. Penalties would follow the pattern set in existing law to enforce safety regulations.

COMMITTEE ACTION

The committee is reporting herewith a substitute for H.R. 7318, a bill drafted by the Civil Aeronautics Board to permit the granting of limited certificates to supplemental air carriers, authority which the U.S. Court of Appeals for the District of Columbia has held the Board does not have under existing law. H.R. 7318, as introduced, would have granted the Board the authority which the court held it did not possess and would have permitted the Board to authorize supplemental operations to continue along the lines of present operations.

The committee substitute, drafted after careful consideration by the full committee and the Subcommittee on Transportation and Aeronautics, would give the Board

some, but not all, of the authority requested by it. The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate

—7—

supplemental carriers, especially, in the field of individually ticketed operations.

The subcommittee conducted hearings on June 20, 21, and 23, 1961, on H.R. 7318 by Mr. Williams, H.R. 7512 by Mr. Moulder, and H.R. 7679 by Mr. Collier, all members of this committee. Testimony was received from the following witnesses: Alfred F. Blatz, president, Blatz Airlines, Inc.; Hon. Alan S. Boyd, Chairman, Civil Aeronautics Board; Clayton L. Burwell, president, Independent Airlines Association; Ralph Cox, Jr., president, United States Overseas Airlines, Inc.; Robert E. Fraley, on behalf of Quaker City Airways, Inc., and Paul Mantz Air Services, Inc.; Ross I. Newman, Associate General Counsel for Rules and Legislation, Civil Aeronautics Board; George S. Patterson, general manager, President Airlines, Inc.; Reed Pigman, Independent Airlines Association; J. W. Rosenthal, Routes and Agreements Division, Bureau of Economic Regulation, Civil Aeronautics Board; Jesse Stallings, Independent Airlines Association; Cliff Stratton, Jr., Air Transport Association of America; Stuart G. Tipton, president, Air Transport Association of America; John H. Wanner, general counsel, Civil Aeronautics Board; and DeWitt T. Yates, general counsel, Independent Airlines Association.

House Report No. 1177

BACKGROUND INFORMATION

Origin of supplemental air carriers

The supplementals, also known as "non-skeds," did not make an appreciable impact on air commerce until after World War II, although such carriers had been in existence several years.

The Civil Aeronautics Act of 1938 stabilized the then existing route structure by giving "grandfather" rights to the 16 major, or trunklines, in existence at that time. Shortly after passage of this act, the Civil Aeronautics Board issued an order under section 416(b)[1] exempting

[1] SEC. 416. (a) • • •

EXEMPTIONS

(b) (1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this title or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

(2) The Board shall not exempt any air carrier from any provision of subsection (k) of section 401 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B), to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of such subsection if the Board finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the enforcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such air carrier from such paragraphs would not

the little nonscheduled operators who were offering now-and-then flights in small planes from their home bases to scattered destinations over the country.

Generally these operations were conducted with aircraft smaller than those used in regular scheduled service.

But after the war three new factors entered the picture. The military had a surplus of used aircraft for sale at cut rates. Thousands of trained and experienced pilots were discharged from the services. The established airlines were hard pressed to meet the boom in demands for air transportation following the war.

—8—

The result was a substantial increase in passenger-carrying operations by the nonscheduled operators. In a short time there were almost 150 of these operators in the field.

In an effort to provide more effective regulation of this transportation, the Board, in 1947, revised its exemption regulations to require these operators to obtain letters of registration. Two classes were established, designated "large irregulars" and "small irregulars." The carriers operating large, transport-type aircraft were prohibited from operating, or advertising to the public that they were operating, regularly or with a reasonable degree of regularity. These revised regulations established criteria under which the carriers could operate as many as 8 to 12 flights

---

adversely affect the public interest: *Provided*, That nothing in this subsection shall be deemed to authorize the Board to exempt any air carrier from any requirement of this title, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or co-pilots. (Identical with sec. 416(b) of the Federal Aviation Act of 1958.)

per month carrying individually ticketed passengers between the same 2 points, depending on the spacing of flights and "breaks" in service.

Large irregular air carrier investigation

When it became apparent that the revised procedure was inadequate to cope with the regulatory problems encountered the Board in September 1951 instituted the large irregular air carrier investigation (docket 5132). In that investigation, where 66 nonskeds sought operating rights, the Board sought to determine—

(1) The future role of the large irregular carriers and the extent of operations which would be permitted;

(2) The selection of carriers to receive operating authority; and

(3) Whether the authority should be by certificate or by exemption.

After extended hearings, the Board in 1954, with some 30 applicants remaining to be heard, decided to expedite the proceedings by splitting it into two parts—

(1) The public interest issues (the role to be assigned the irregular carriers and the scope of operations to be authorized); and

(2) Consideration of individual qualifications.

Exemption authority for supplementals

On November 15, 1955, the Board, with three members for and two against, issued a decision (order E-9744) on

the public interest aspects of the case, finding that the irregulars comprise a "separate class of carriers" performing varied and flexible services. The Board found that the operations of these carriers would not adversely affect the certificated route carriers. The Board determined that unlimited charter authority should be granted, together with authority to perform individually ticketed or waybilled service not to exceed 10 flights per month in each direction between any 2 points. The 10-flight limitation was arrived at by averaging the 8 to 12 flights permitted under prior regulations.

This new authorization was granted to all members of the class on an interim exemption basis, pending the Board's final decision on the qualifications of individual carriers and the question of whether the final authority should be by certificate or by exemption.

The Board's decision of November 15, 1955, was challenged by the certificated industry, and on July 19, 1956, the Court of Appeals for the District of Columbia Circuit held the order invalid because the Board had not made appropriate findings to support its conclusion that a requirement of certification would be an undue burden on the carriers. The Supreme Court denied a petition for

writ of certiorari. On December 21, 1956, the court of appeals stayed the issuance of its mandate until 60 days after the date of the final Board decision in the *Large Irregular Carrier* case, docket 5132.

Certification of supplementals

On January 28, 1959, with two members, the Board issued its decision in docket 5132 granting temporary

certificates of public convenience and necessity for supplemental air service to 23 carriers found by the Board to be fit to provide the service authorized (order E-13436). On July 8, 1959, the Board issued 2 additional certificates (order E-14196) for a total of 25 such certificates. Under these certificates, supplemental air carriers were authorized to provide unlimited planeload charter service, and to conduct, without reference to any specific terminal or intermediate points, not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month in interstate air transportation.

Court decision on certification of supplementals

This decision was challenged in the U.S. Court of Appeals for the District of Columbia Circuit, and on April 7, 1960, the court found (*United Air Lines et al.* v. *Civil Aeronautics Board*) that the Board's action was legally deficient in three respects:

1. The certificates issued by the Board did not specify the terminal and intermediate points between which air transportation was authorized but granted a blanket authorization to operate between any two points in the United States.

2. The court held that the 10-flights-a-month limitation was in violation of section 401(e) of the act which provides: "No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules • • •"

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out (one judge dissenting) that the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations.

Concerning what should be done about the matter, the court said:

> If the requirements of section 401(e) interpose an insuperable obstacle to the full development of supplemental air service, which they may well do, the problem is for the Congress. The Board should present it there.

History of congressional action

The Board then submitted to Congress proposed legislation to give the Board the authority which the court held it did not have and this was introduced in the House and Senate (H.R. 7593 and S. 1543, 86th Cong., 2d sess.).

Hearings were held on May 23 and 24, 1960, but after consideration of the testimony, it was decided that the issues involved could not be considered adequately in the short time remaining before adjournment, and the committee recommended the enactment of temporary legislation maintaining the status quo to permit further consideration during the 87th Congress (H. Rept. 1877, 86th Cong., 2d sess.).

Subsequently Public Law 86-661 was enacted to permit continuation of supplemental air operations until March 14, 1962.

Early in the present session, the Board again submitted a draft bill to authorize the issuance of limited certificates for supplemental operations. This proposed legislation was introduced as H.R. 7318 and S. 1969.

Board Member Gurney did not join in the recommendation. His views are explained in a letter included hereafter in this report.

ROLE OF SUPPLEMENTALS

Need for charter service

Witnesses who testified in the hearings were in agreement that the basic role of the supplementals in the air transportation picture is to provide charter service.

Even the witness for the Air Transport Association, speaking for the scheduled airlines, while strongly opposing the granting of authority to the Board to issue certificates permitting individually ticketed, route-type service, supported legislation to clarify the Board's authority to issue certificates to the supplementals for all-charter operations.

That charter service is the mainstay of the supplementals is shown by statistics supplied the committee by the Civil Aeronautics Board during the hearings.

These statistics show that during fiscal year 1960, the certificated supplemental carriers generated approximately 1.8 billion revenue passenger miles as compared with 1 billion revenue passenger miles for fiscal 1959. This constituted 4.3 percent of the total revenue passenger miles generated by the air carrier industry, including the

certificated route air carriers. In 1959 the supplemental carriers obtained only 2.7 percent of the total revenue passenger miles.

The domestic traffic of the supplemental carriers increased from 312 million passenger miles in fiscal 1959 to 346 million in 1960. This traffic was 40 percent civilian and 60 percent military. The international traffic of the supplementals increased from 696 million passenger miles in 1959 to 1.4 billion in 1960, 18 percent of which was civilian and 82 percent military. This includes all traffic, i.e., individually ticketed, charter, and contract.

The supplemental carriers increased their total transport operating revenues from $51 million in 1959 to $59 million in 1960. Contract and charter services, both military and civilian, accounted for $40 million in 1959 and $48 million in 1960. Revenue from individually ticketed services, both passenger and freight, was $11 million in 1960, the same as in 1959.

Thus, it is clear that charters are the principal source of revenue for the supplementals.

The basic concept written into the substitute bill reported herewith is that the supplementals essentially are charter operators. The committee recognizes that under special circumstances and in temporary situations, individually ticketed supplemental service fills a definite need in our transportation system. The committee recognizes also that individually ticketed supplemental service must necessarily be subject to close scrutiny by the Civil Aeronautics Board to make certain that such service is restricted

to supplemental needs and does not provide unfair or discriminatory competition to scheduled carriers, whose

routes and operating conditions are necessarily to a large extent inflexible because of conditions which must be met to provide the service required for public convenience and necessity.

The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.

Your committee, however, after considering the problem, came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, *subject to the limitations contained in the reported bill.* This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications.

Individually ticketed operations

H.R. 7318, as introduced, would have authorized the Board to issue certificates without specifying the terminal and intermediate points, and with such limitations as to frequency of service, size or type of equipment, or otherwise, to assure that the service so authorized remained supplemental to the service of the certificated route carriers.

How much, if any, individually ticketed service supplementals should be authorized to perform is a very difficult and controversial question.

Supplementals now operating under Board authority are permitted to sell individually ticketed service, but in rendering such service are limited to not more than 10 trips per month between any two points.

House Report No. 1177

The legislation proposed by the Board would have permitted the issuance of certificates authorizing individually ticketed service "for such periods as may be required for the public convenience and necessity."

One of the principal reasons which the court assigned in its opinion in *United Airlines* v. *CAB* for invalidating the Board's action in granting supplemental certificates was that the certificates permitted operations between points selected by the carrier and did not specify the terminal points between which the carrier was authorized to engage in air transportation as required by section 401(e) of the act. The limitation on the number of trips, in lieu of specifying the terminal points, was likewise held by the court to violate the provisions of that subsection prohibiting the Board from placing a limitation in a certificate restricting the right of an air carrier to add to or change schedules.

In the hearings, both the Civil Aeronautics Board and the supplemental air carriers testified that such limited individually ticketed operations to supplement service by the scheduled carriers filled a real public need, were essential to the continued survival of the supplementals, and resulted in no demonstrable injury to the scheduled carriers.

The scheduled carriers opposed any authority for supplementals to conduct individually ticketed operations as a serious threat to the health and prosperity of the scheduled industry, citing the poor earnings of the scheduled carriers for the past 5 years. A witness for the industry testified that in 1960 the 12 domestic trunklines had a net profit of $1,188,000 on gross operating revenues of almost $2 billion.

Regulatory concepts of existing law

The so-called certificates issued by the Civil Aeronautics Board to the supplementals were illegal. This illegality was not a mere technical infraction of the act. It was fundamental. The 10-flight individually ticketed grant violated basic principles of the economic regulatory philosophy of the Federal Aviation Act of 1958. Thus, the act recognizes that a carrier's ability to provide good public service should not be hampered by artificial limits on the number of regular schedules for ticketed traffic it can operate over its routes. The act rejects the restrictionist philosophy prevalent in some foreign countries that a governmental bureau should divide the market by assigning each carrier an allowed number of flights.

The committee has carefully considered the testimony and all available evidence and failed to find any sound reason why these fundamental principles of the act should be changed. From the standpoint of good public service, and from the standpoint of opportunity for each carrier to compete and develop its business, any air carrier certificated to operate individually ticketed service over a route should be able to do so without CAB-imposed limitations on the frequency of service. If there is room for competition over a route, the CAB has authority in section 401 to certificate additional carriers. If there is not room for such competition, the Board should not be free to avoid the consequences of competition by limiting the volume of service to be provided by one, some, or all of the carriers in the market. Moreover, the committee does not consider it either feasible or desirable to authorize an air transport

system in which the amount of service is half regulated and half unregulated.

The committee recognizes, however, that there may be exceptional circumstances in which, for a limited period of time, it may be desirable for a carrier not regularly certificated for a route to be authorized to conduct ticketed operations over the route. Thus, during the Christmas holidays and other periods of peak or unusual traffic demand, where the capacity of the carrier or carriers serving the route may be insufficient to meet the demand, it may be desirable and economically sound for the Board to permit another carrier to provide supplemental service for a temporary period. The special operating authorization under the new section 417 is designed to meet this situation. In the committee's view, this type of special authority to supplement the service over a certificated route should be strictly limited in nature and of short duration—normally, not over 30 days.

It is the committee's view that the granting of such temporary special operating authority by the Board should not be regarded as constituting any vested right or interest in the route by the carrier so authorized. If the insufficiency of capacity is a chronic problem over the particular route, and can be solved only by an additional carrier, the solution should be in permanent or temporary certification under section 401(d) (1) or (2) of existing law.

The new section 417 would require that an authorization under that section contain limitations as to the amount of service or the type of equipment used to assure that it will meet the requirements for additional transportation with-

out significant diversion of traffic from the carriers holding certificates for the route. The section provides that such authorization shall be for not more than 30 days, but can be extended for additional periods aggregating not more than 60 days.

The Board is directed to establish a procedure for ex-

peditiously handling these situations. It is required to give written notice to the air carriers certificated to provide service between the points involved and to provide an opportunity for such carrier to protest the issuance of such operating authorization in writing. Whether the carrier would be heard orally in support of the protest would be a matter for the Board's discretion, taking into account the degree of emergency involved in meeting the shortage.

A conscientious effort to make maximum use of this section will provide the Board with greater flexibility in meeting seasonal traffic peaks than it has ever had heretofore, and it will also provide the supplemental air carriers with an effective means of providing a needed public service to supplement the existing air transportation system. The committee believes that there is no provision of the bill which, if properly used, would contribute more directly to providing the public with more convenient and adequate air transportation.

PROVISIONS FOR ENFORCEMENT

The grants of individually ticketed authority in the past led to a multitude of enforcement problems and evasions, which the Board has been unable to cope with under existing law.

Supplemental carriers on occasion have entered into illegal pooling arrangements to provide what amounts to scheduled service contrary to the intent of the Board. Board efforts to end such practices have been frustrated by protracted litigation. Judicial stays of Board orders have permitted the continuation of highly profitable, although palpably illegal, operations by some of the carriers.

Although such operations have never been conducted by any large number of carriers, the record shows that the resultant diversion of traffic from carriers operating legally has been substantial, to the detriment not only of scheduled carriers but of those supplementals operating legally.

In an effort to protect both the supplementals and the scheduled industry by making such illegal operations unprofitable, the committee has accepted the recommendations of the Civil Aeronautics Board by extending the civil penalty provisions of the Federal Aviation Act of 1958 to cover violations of the economic provisions of title IV and of certificates issued thereunder. This has been accomplished by incorporating into the reported bill the provisions of H.R. 7303, a bill recommended by the Civil Aeronautics Board to authorize the imposition of civil penalties in certain cases, to permit a civil penalty of not to exceed $1,000 for each violation.

INTERIM OPERATING AUTHORITY

The interim operating authority in the nature of "grandfather" provisions in sections 5 and 6 of the reported bill are designed to permit the existing supplemental carriers

to operate until such time as the Board can pass upon applications for new certificates under the terms of this legislation.

The committee believes that the provisions of sections 5 and 6 strengthen the bill and will have the effect of eliminating various complexities resulting from a series of exemptions, orders, and stays, without injustice to the carriers involved.

—14—

Section 6 of the bill requires any carrier desiring to continue to operate in the future as a supplemental air carrier to file a new application under section 401(d)(3) seeking such certificate within 30 days from the time of enactment of the bill. If no application for a new certificate is filed within that period, the carrier's present authority will terminate, whether derived from an exemption, a certificate, or interim operating authority under Public Law 86-661. Any carrier which files an application for a certificate within 30 days is permitted to continue to operate under its present authority until the Board acts under section 5 of the bill. When the Board acts under section 5, the existing authority of a carrier will terminate, whether that authority is derived from a certificate, an exemption, or interim operating authority under Public Law 86-661.

If a carrier files a new application for a certificate as a supplemental air carrier under section 401(d)(3) within 30 days after enactment of this bill, the Board will next consider whether such carrier should be issued new interim authority to engage in supplemental air transportation pending Board action on the certificate application. The committee is aware that the issuance of new interim authority identical to that which the carriers now hold, rather

than an extension of their present certificate or exemption, may appear to be an unnecessary step. Only those who have been forced to wind their way through the Chinese maze of orders and exemptions can appreciate how directly the public interest would be served by the issuance of a new single order clearly specifying what carriers are permitted to conduct what operations pending action on their certificate applications.

The Board is directed to issue new interim authority to four categories of carriers. As of this time the first category consists of a single carrier, Vance Roberts, which was given operating authority by the Board pursuant to section 1(2) of Public Law 86-661. Since the Board has just acted on this application within the last few months, the bill requires the automatic issuance by the Board of new interim operating authority without any further showing by the carrier.

The remaining three categories of carriers holding some form of operating authority from the Board must satisfy certain specific requirements before the Board is required to issue new interim operating authority to them. These requirements have been included in section 5 by the committee to insure that the effect of the grandfather provisions is to avoid hardship by permitting legally operating carriers to continue to operate, and not to revive dormant carriers which have not operated. A carrier which is not now operating will have the same right as a new applicant to apply for and receive a certificate as a supplemental air carrier. Justice does not require that such a carrier be permitted to begin operations prior to the time that the Board has passed on its application for a certificate.

House Report No. 1177

A carrier in one of these three categories must be able to show that between the dates of issuance of its operating authority and of the enactment of this bill, it performed a substantial portion of the service authorized by its certificate or other operating authority or substantial operations in overseas or foreign air transportation authorized by the Board or substantial operations for the Military Establishment as authorized by the Board; that such certificate or operating authority has not been revoked or otherwise terminated by the Board; and that the certificate or operating authority is held by the original grantee or has been

transferred with the Board's approval. Special provision is made for an application for transfer which may be pending at the time of enactment of the bill. The following, then, are the three categories of carriers which may be entitled to receive new operating authority under section 5. The categories are mutually exclusive. A carrier is in one category, and one only, or in none.

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to order E-13436, of January 28, 1959. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

House Report No. 1177

CARRIERS	COMMENT
American Flyers Airline Corp.	
Arctic-Pacific, Inc.	Certificate expired May 30, 1961; no application for renewal was filed. Authority terminated by Board Order E-16734 of April 28, 1961.
Associated Air Transport, Inc.	
Aviation Corp. of Seattle, d/b/a Westair Transport	Application for transfer and renewal of certificate pending.
Blatz Airlines, Inc.	
Capitol Airways, Inc.	
Coastal Air Lines (formerly Coastal Cargo Co., Inc.)	
Conner Air Lines, Inc.	No transport operations performed in supplemental air service during test period.
General Airways, Inc.	Certificate sold by trustee in bankruptcy but no application for transfer to the purchaser has been filed.
Imperial Airlines, Inc. (formerly Regina Cargo Airlines, Inc.)	
Johnson Flying Services, Inc.	
Paul Mantz Air Services	

CARRIERS	COMMENTS
Modern Air Transport, Inc.	
Overseas National Airways	
President Airlines, Inc. (formerly California Eastern Aviation, Inc.)	
Saturn Airways, Inc. (formerly All-American Airways, Inc.)	
Sourdough Air Transport	
Southern Air Transport, Inc.	
Standard Airways, Inc.	
Stewart Air Service	
Transocean Airlines	
United States Overseas Airlines, Inc.	
World Airways, Inc.	

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to Order E-14196, of July 8, 1959. The committee is aware of no circumstance which would prevent their receiving interim operating authority.

Trans International Airlines, Inc. (formerly Los Angeles Air Service, Inc.)	
Quaker City Airways, Inc.	

The following carriers were given interim authority to operate in interstate air transportation as a supplemental

air carrier under Board Order E-9744, of November 15, 1955, and have pending before the Board applications for

a certificate as a supplemental air carrier which were filed prior to July 14, 1960. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

CARRIERS	COMMENT
Air Cargo Express, Inc.[1]	No transport operations performed in supplemental air service during test period.
Airline Transport Carriers, Inc., d/b/a California Hawaiian Airlines.	
Argonaut Airways Corp.	
Meteor Air Transport, Inc.	Operating authority terminated by Order E-15183 of May 4, 1960.
Miami Airline, Inc.	
S.S.W., Inc.	Operating authority terminated by Order E-15252 of May 20, 1960.
World Wide Airlines, Inc.	

There remains one additional category of carriers for which the bill makes special provision. Four carriers were

[1] The certificate application of Air Cargo Express, Inc., was denied in Order E-13436, but the Board action reversed and the application remanded for further proceeding by the Court of Appeals for the District of Columbia in the case of *Great Lakes Airlines et al.* v. *C.A.B.*, decided Feb. 24, 1961.

given exemption authority for supplemental air service by Order E-9744, but have no applications for certificates pending before the Board because their operating authority under the exemption order was specifically terminated by the Board in Order E-13436. These carriers appealed the Board's order denying a certificate and revoking their exemption authority to the courts and are now operating under a judicial stay pending review. Certiorari has been denied by the Supreme Court, but a petition for reconsideration of this action is pending. Carriers in this category are Central Air Transport, Inc., Curry Air Transport, Ltd., Great Lakes Airlines, Inc., and Trans-Alaskan Airlines. Section 6 provides that these carriers are authorized to continue to operate subject to all conditions contained in Order E-9744 or imposed by the court until the court shall lift its stay or until final disposition of the judicial proceeding.

NEED FOR LEGISLATION

The supplemental carriers constitute an important element in national defense. During the Berlin airlift, with only 5 percent of the Nation's civil air transport capacity, these carriers moved approximately 25 percent of the passengers and 57 percent of the cargo carried by civilian aircraft. In 1950, the supplementals supported the Korean airlift by supplying over half the commercial capability requested by the military. The supplementals flew the first planes to Vienna in 1956 to provide airlift for Hungarian refugees. In the Lebanon crisis, the supplementals offered the military 38 four-engine aircraft within 4 hours.

The Department of the Air Force, in a letter included hereafter in this report, stated that continued existence of the supplementals is a real value in terms of national defense.

The Civil Aeronautics Board in December 1955 characterized the supplementals as: "A reserve air fleet, capable of being called into action to meet emergency transportation needs with a minimum amount of notice."

The legislation reported herewith is needed to stabilize the supplemental industry, which has existed in an atmosphere of uncertainty for many years.

Enactment of this legislation will give the supplemental industry a more permanent role in air transportation. It will permit the industry to make plans for the future and to complete financial arrangements for the purchase of modern equipment requiring amortization over a period of years. A more permanent status will brighten the economic outlook for the industry which, a witness testified in the hearings, has shown losses from 1957 to date, after making a profit in 5 of the 7 years between 1950 and 1957.

SECTION-BY-SECTION EXPLANATION OF THE COMMITTEE AMENDMENT

The following is a section-by-section explanation of the substitute amendment reported by the committee. Unless otherwise indicated, existing law referred to is the Federal Aviation Act of 1958.

Section 1

This section would amend section 101 of existing law by adding a new paragraph (32) defining the term "supple-

mental air carrier" and a new paragraph (33) defining the term "supplemental air transportation."

"Supplemental air carrier" would be defined as an air carrier holding a certificate of public convenience and necessity authorizing such air carrier to engage in supplemental air transportation.

"Supplemental air transportation" would be defined as charter trips in air transportation rendered pursuant to a certificate issued by the Civil Aeronautics Board to supplement the scheduled service authorized to be performed by the certificated route air carriers, but would not include the transportation of mail by aircraft.

Section 2

This section would amend section 401(d) of existing law by adding a new paragraph (3) which would authorize the Civil Aeronautics Board to issue to any applicant, other than a certificated route air carrier, a certificate of public convenience and necessity to engage in all or any part of the supplemental air transportation covered by the application. The Board could issue such certificate for such periods as it determines that the transportation for which authority is sought is required by the public convenience and necessity. Before issuing such a certificate, the Board would be required to make a determination that the applicant is fit, willing, and able to perform the transportation authorized by the certificate and to conform to the provisions of existing law and the regulations of the Board issued thereunder. Under the amendment to existing law made by section 3 of the committee substitute, each supplemental certificate would designate the terminal and inter-

mediate points between which the air carrier concerned could operate, or, if the Board determines that such designation is not practicable, the certificate would designate the geographical area or areas within or between which such air carrier could operate. The standard of fitness to be applied by the Board to an applicant for a supplemental certificate could vary according to the scope of the transportation authority granted by the certificate. It is obvious, for example, that the fitness requirements of the Board

with respect to the financial resources of an applicant could vary considerably as between an applicant seeking unlimited authority to engage in supplemental air transportation within a large geographical area and an applicant seeking limited authority to engage in such transportation between two specific points. The Board also would be required to include in each supplemental certificate such limitations as it finds necessary to insure that the service rendered thereunder will be supplemental to the scheduled service authorized to be performed by certificated route air carriers.

Section 3

This section would amend section 401(e) of existing law by dividing it into six numbered paragraphs as follows:

1. Paragraphs (1) and (2) would repeat provisions presently contained in section 401(e) of existing law (relating to terms of certificates held by air carriers) without substantive change.

2. Paragraph (3) would be added to such section 401(e) of existing law so as to require that each supplemental

certificate issued by the Civil Aeronautics Board designate the terminal and intermediate points between which the air carrier is authorized to operate, unless the Board determines that such designation of points is not practicable. If the Board determines that such designation of points is not practicable, it would be required to designate the geographical area or areas within or between which the air carrier is authorized to operate.

3. Paragraph (4) would repeat the provision of such section 401(e) of existing law which prohibits the imposition of limitations on a certificate of public convenience and necessity restricting the right of an air carrier to change schedules, equipment, accommodations, and facilities for performing the authorized transportation as may be required by the development of the business and the public demand. This provision would be amended so as to permit the Board to impose such limitations on a supplemental certificate whenever the Board deems it necessary in order to insure that the service rendered thereunder will be supplemental to the service authorized to be rendered by certificated route air carriers. The imposition of such limitations would continue to be prohibited with respect to certificates issued to scheduled route air carriers.

4. Paragraph (5) would repeat the provisions of section 401(e) of existing law (relating to operations of air carriers during an emergency) without substantive change.

5. Paragraph (6) repeats the provision of section 401(e) of existing law authorizing any air carrier to perform charter trips or any other special service, under Board

regulation, without regard to points specified in its certificate. This provision would be amended so as to exclude from this authorization any air carrier holding a supplemental certificate issued by the Board under the proposed new section 401(d)(3).

Section 4

This section would add a new section 417 to existing law to permit the Civil Aeronautics Board to issue to a supplemental air carrier a special operating authorization under which such air carrier would have limited authority to engage in air transportation, temporarily, between specified points. It would be under this provision of the committee substitute that supplemental air carriers could be

authorized to engage in individually ticketed and individually waybilled operations.

Subsection (a) of the proposed new section 417 would grant the Board authority to issue a special operating authorization to a supplemental air carrier (but not to a certificated route air carrier) to engage in air transportation temporarily between specified points. Such authorization could be issued only if the Board finds, after an investigation, that the capacity for air transportation between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service, or, that there is a temporary requirement for air transportation between two points, one or both of which are not regularly served by any air carrier. The Board also would be required to find that a supplemental air carrier can provide the additional service temporarily required in the public interest.

House Report No. 1177

Subsection (b) of the proposed new section 417 would require, in effect, that each special operating authorization contain such limitations as the Board determines to be necessary to insure that the air transportation authorized thereunder will alleviate the temporary insufficiency in air transportation found to exist, without a significant diversion of traffic from certificated route air carriers holding certificates authorizing them to engage in air transportation between the points involved. No such special operating authorization could be issued for more than 30 days. However, the Board could extend a special operating authorization for additional periods aggregating not more than 60 days, thus enabling the holder of such authorization to continue operations for a total of not more than 90 days.

This subsection also would provide that a special operating authorization shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act. The purpose of this provision is to make it clear that such authorization is not to be considered a license to engage in any activity of a continuing nature such as would enable the holder thereof to file an application for renewal before the expiration of the authority granted and continue to operate until the Board could dispose of such renewal application. This provision would not prevent the holder of a special operating authorization from applying for a renewal thereof, subject to the limitations contained in the proposed new section 417, but it would prevent such holder from continuing to operate after the expiration of such authorization unless the Board had affirmatively renewed it.

Subsection (c) of the proposed new section 417 would require the Board to prescribe regulations establishing proce-

dures for the expeditious handling of requests for special operating authorizations. The Board would be required to include in such procedures written notice to certificated route air carriers authorized to engage in air transportation between the points involved so as to give such air carriers an opportunity to protest the issuance of a special operating authorization affecting such points. Since the issuance of a special operating authorization would depend upon the fact that air transportation being offered between particular points had been found to be temporarily insufficient to meet the needs of the public or the postal service, it is obvious that the Board must be able to act with reasonable speed in order to alleviate such temporary insufficiency of air transportation. Therefore, there is no specific requirement that the Board conduct a hear-

ing at which it would be required to take evidence from opposing parties, and oral argument before the Board is left to its discretion. The Board could conduct such a hearing and provide for oral argument if the circumstances of the case would permit such procedures without causing undue delay in the issuance of the special operating authorization involved. The discretion vested in the Board is necessary to enable it to carry out its duty, under the proposed new section 417, of handling requests for special operating authorizations as expeditiously as possible, taking into account the degree of emergency involved.

Section 5

Under subsection (a) of this section the Board would be required to issue a new interim certificate or new interim operating authority (in the nature of temporary grand-

father rights) to any applicant who, within 30 days after the enactment of this legislation, applies to the Board for a certificate to engage in supplemental air transportation and can show the Board—

(1) that it holds authority previously granted by the Board to engage in interstate air transportation as a supplemental air carrier and has an application pending before the Board for certification as a supplemental air carrier which was filed before July 14, 1960 (the date of enactment of Public Law 86-661, enabling the Board to authorize supplemental air transportation on a temporary basis);

(2) that it has conducted substantial operations under such authority, or substantial operations (authorized by the Board) in oversea or foreign air transportation as a supplemental or large irregular air carrier, or substantial operations (authorized by the Board) for the Military Establishment of the United States;

(3) that the operating authority held by the applicant had not been terminated by the Board, or had not expired, before the enactment of this legislation (such authority would be deemed to have been so terminated if the Board had issued a final order to that effect on or before the date of enactment of this legislation, notwithstanding a pending judicial review of such Board order); and

(4) that such operating authority is held by the original grantee or has been transferred to the ap-

plicant with Board approval. (Provision is also made for the extension of grandfather rights under this section to a person who has an application pending before the Board for approval of a transfer to him of operating authority referred to in this section, but the Board could not extend grandfather rights to such person unless it approves such transfer.)

The new interim certificate or new interim authority issued by the Board under this section would replace the certificate or interim operating authority held by the applicant at the time of the enactment of this legislation and would be valid until the Board grants or denies the applicant's request for the supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

Subsection (b) of this section would enable an air carrier which holds interim operating authority to engage in supplemental air transportation under Public Law 86-661 to

qualify for new interim authority (in the nature of temporary grandfather rights) by applying for a supplemental certificate under the proposed new section 401(d)(3) within the 30-day period following the enactment of this legislation and by showing that it or its predecessor received interim operating authority under such Public Law 86-661.

Subsection (c) of this section would provide that a new interim certificate or new interim authority issued under this section shall not be deemed to be a license within the meaning of section 9(b) of the Administrative Procedure Act. The purpose of this provision is to make it clear

that any such certificate or authority would be valid only until the Board grants or denies the applicant's request for a supplemental certificate under the new section 401(d)(3) proposed by section 2 of the committee substitute. In other words, the certificate or authority issued under section 5 shall not be considered a license to engage in any activity of a continuing nature so as to enable the holder thereof to file an application for renewal and continue to operate until the Board can dispose of the renewal application.

Section 6

Subsections (a) and (b) of this section would enable any air carrier, with certain exceptions noted in the explanation of subsection (c) of this section, which is presently operating in air transportation as a supplemental air carrier under authority previously granted by the Board to continue its operations, for a limited period of time, under the terms of such authority. If such air carrier does not file an application with the Board for a supplemental certificate under the proposed new section 401(d)(3) within the 30-day period following the enactment thereof, its authority to operate in air transportation as a supplemental air carrier, previously granted by the Board, would be terminated upon the expiration of such 30-day period. If such air carrier does file such an application within such 30-day period, it would be able to continue its operations under the terms of the authority previously granted, until the Board grants or denies the issuance to such air carrier of a new interim certificate or new interim authority (tem-

porary grandfather rights) under section 5 of the committee substitute. As noted previously in the explanation of such section 5, the new certificate or authority issued thereunder would be valid until the Board grants or denies such air carrier's request for a supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

Subsection (c) of this section would permit certain air carriers who previously received authority from the Board to operate in air transportation as supplemental air carriers, and who are presently continuing their operations solely by virtue of a judicial stay of an order of the Board terminating such authority, to continue their operations until such judicial stay is lifted or until the final disposition of the judicial review proceeding of such Board order, whichever first occurs. The significance of this provision is that it would permit a group of air carriers (referred to as the "Great Lakes group") to continue operations until the courts have finally disposed of their case. The operating authority of this group was previously terminated by the Board because they were found to have operated illegally. Of course, this provision does not prevent any air carrier in the so-called Great Lakes group from applying for a new supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3).

Section 7

This section would preserve to the Board authority to institute or maintain enforcement proceedings against any

air carrier which obtains a new interim certificate or new interim authority under the grandfather provisions of this legislation, or obtains a new supplemental certificate authorized to be issued by the Board under the proposed new section 401(d)(3), for violations committed by such air carrier with respect to the provisions of existing law, the terms of any certificate or other operating authority held by such air carrier, or Board regulations, without regard to when such violations occurred. This provision also would permit the Board to impose sanctions for such violations upon (1) the existing authority held by the air carrier concerned, (2) the new interim certificate or new interim authority issued under the grandfather provisions of this legislation, or (3) the supplemental certificate issued under the proposed new section 401(d)(3).

Section 8

This section provides that applications of air carriers filed in the Large Irregular Air Carrier Investigation (Docket No. 5132, and others) would be deemed to have been finally disposed of by the Board on the enactment of this legislation. The investigation referred to was begun by the Board in 1951 and had as one of its purposes the determination by the Board of the proper role of supplemental air carriers in this Nation's system of air transportation. Since this legislation would amount to a policy declaration by the Congress as to the role of supplemental air carriers in our system of air transportation, it is appropriate to provide for the termination of the Board's investigation into this question upon the enactment of this legislation.

House Report No. 1177

Section 9

This section would amend section 901(a) of existing law so as to enable the Board to impose civil penalties for violations of the economic provisions of existing law, and the regulations and orders of the Board issued thereunder. At the present time such violations are subject to criminal prosecution, under section 902(a) of existing law, if such violations are committed "knowingly and willfully." In the case of minor violations or actions falling short of knowing and willful misconduct, criminal prosecution may be too drastic or inappropriate. The availability of the civil penalty would enable the Board, in acting upon less serious violations, to improve the enforcement program with respect to economic violations by speedily imposing civil penalties, thus avoiding situations such as have existed in the past where offenders have been able to persist in violations during the time required to prosecute a formal proceeding or court action. This section also would add to the civil penalties section of existing law a provision (similar to the provision applicable in the case of criminal penalties) that, if any economic violation is a continuing one, each day of such violation shall constitute a separate offense. No change is made in the amount of the civil penalty which could be imposed, which amount is set forth in existing law as "a civil penalty of not to exceed $1,000" for each violation. The Board would have authority to compromise any civil penalty imposed by it.

The amendments to the civil penalties section of existing law proposed by this section of the committee substitute

would not be limited in application to violations com-

mitted by supplemental air carriers, but would include violations by certificated route air carriers or any other person.

Since this section of the committee substitute would not take effect until the date of enactment of this legislation, the Board could not impose civil penalties for economic violations committed before such date of enactment.

Section 10

This section would amend section 902(a) of existing law so as to preserve the criminal penalties contained in such section for knowing and willful violations of the economic provisions of existing law. Such section 902(a) contains an exception clause which excepts from the provisions of such section violations "for which no penalty is otherwise herein provided." Under the amendment made by section 9 of this legislation, economic violations would be subject to the civil penalties provided for in section 901(a) of existing law. If the phrase "for which no penalty is otherwise herein provided" contained in section 902(a) of existing law is interpreted to refer to violations for which no penalty is otherwise provided in the Federal Aviation Act of 1958, rather than violations for which no penalty is otherwise provided in such section 902(a), the application of civil penalties to economic violations would place such violations within the exception clause of such section 902(a). To prevent the possibility of such an interpretation, the language of the exception clause would be changed to read as follows: "for which no penalty is otherwise provided in this section." Thus, it would be clear that the criminal penalties remain applicable to economic violations.

House Report No. 1177

Section 11

This section would make technical amendments to conform the table of contents contained in the first section of existing law with the changes made by the committee substitute.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL AVIATION ACT OF 1958

* * * * *

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. As used in this Act, unless the context otherwise requires—

* * * * *

(32) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(33) "Supplemental air transportation" means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized

remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401 (d) (1) and (2) of this Act.

[(32)] (*34*) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

[(33)] (*35*) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

* * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

Certificate of Public Convenience and Necessity

CERTIFICATE REQUIRED

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

APPLICATION FOR CERTIFICATE

(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

House Report No. 1177

NOTICE OF APPLICATION

(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Board shall dispose of such application as speedily as possible.

ISSUANCE OF CERTIFICATE

(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such

transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate authorizing the whole or any part thereof for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the service of a supplemental air carrier and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to supplemental air transportation, including the nature of the public need found to exist and the extent of the obligation imposed on an air carrier engaging in such air transportation to provide the service authorized by the certificate. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

(ii) If any applicant who makes application for a certificate for supplemental air transportation within thirty days after the date of enactment of this paragraph shall show—

(A) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted

January 28, 1959, or order E-14196, adopted July 8, 1959, or that it or its predecessor has received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960, 74 Stat. 527;

(B) that between the effective date of the certificate or interim operating authority and the date of enactment hereof, the applicant or his predecessor in interest lawfully performed either (1) any portion of the service authorized by the certificate or interim operating authority, or (2) any operations for the Military Establishment of the United States authorized by the Board; and

(C) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this paragraph, and is held by the original grantee or has been transferred with Board approval pursuant to section 401(h): Provided, That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall issue a certificate here-

under if it approves the transfer pursuant to section 401(h) of this Act;

the Board, upon proof of such facts only, shall issue a certificate authorizing such applicant to engage in supple-

mental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to the terms, conditions, and limitations attached thereto for such period as the Board deems proper: Provided, That this period shall not extend beyond the effective date of an order of the Board denying renewal of the certificate or interim operating authority in a renewal proceeding pending at the time of enactment hereof.

TERMS AND CONDITIONS OF CERTIFICATE

(e) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the busi-

ness and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board. *A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within which service may be rendered. Nothing in this subsection shall prevent the Board in specifying the service to be rendered under a certificate for supplemental air transportation from placing such limitations on such certificate as it may find to be necessary to assure that the services are limited to supplemental air transportation: Provided, That the Board may not impose such limitations upon certificates issued pursuant to paragraphs (1) and (2) of subsection (d).*

—27—

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED.

For the information of the Members of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

* * * * *

House Report No. 1177

AGENCY REPORTS

The committee considered the following letters:

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 16, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, House Office Building,
Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in reply to your requests of June 8 and June 9, 1961, for reports on H.R. 7318 and H.R. 7512, bills to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

The Department of Commerce and the Civil Aeronautics Board in statements to your committee indicate that the supplemental air carriers perform a useful public service and help meet the Nation's air transportation needs. The Bureau of the Budget concurs generally in the statements of those agencies and recommends enactment of legislation

to authorize the Civil Aeronautics Board to issue limited certificates of public convenience and necessity for air services supplemental to those provided by the regular common carriers. Since H.R. 7318 was drafted by the Board to give it the authority it believes necessary for this purpose, we recommend it be enacted rather than H.R. 7512.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

House Report No. 1177

THE SECRETARY OF COMMERCE,
Washington, D.C., June 19, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of June 9, 1961, requesting the views of the Department on H.R. 7318 and H.R. 7512, bills to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

H.R. 7318 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under sections 401(d) (1) and (2) of the act, the new class to be known as supplemental air carriers; that such carriers may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers; that the Civil Aeronautics Board be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized; that the Board be authorized to grant blanket authorization without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. H.R. 7318 would also provide for grant of statutory operating rights to the existing holders

of supplemental air carrier certificates, in the nature of grandfather rights.

H.R. 7512 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under section 401(d) (1) and (2) of the act, the new class to be known as supplemental air carriers; that such carriers may request a certificate of public convenience and necessity which limits the holder to performance of unlimeted passenger or individually waybilled cargo operations. ited planeload charter operations, limited individually tickand the right of first refusal in the operation of all charter operations; that the Civil Aeronautics Board be authorized to grant a blanket authorization without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. H.R. 7512 would also provide for grant of statutory operating rights to the existing holders

of supplemental air carrier certificates, in the nature of grandfather rights.

On January 28, 1959, in the *Large Irregular Air Carrier Investigation,* CAB docket 5132, the Board issued temporary certificates of public convenience and necessity for supplemental air carrier operation in interstate air transportation. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any

single pair of points in any calendar month, and to render unlimited planeload charter services.

The issuance of such certificates was challenged in the courts by regularly authorized air carriers, i.e., air carriers certificated to render route-type service. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit set aside the Board action of January 28, 1959, *United Air Lines et al.* v. *Civil Aeronautics Board* (278 F. 2d 446). The court found that the certificates issued for supplemental air service did not specify the terminal and intermediate points between which air transportation had been authorized, contained limitation as to the number of flights contrary to section 401(e) of the act, and were not based on standards of fitness for applicants for certificate required by section 401(d) of the act.

As a stopgap measure to avoid immediate cessation of 25 supplemental air carrier authorizations, the Congress enacted Public Law 86-661, approved July 14, 1960. Such legislation was designed to maintain the status quo of the supplemental air carriers for up to 20 months after enactment so as to permit further consideration to be given the entire matter of supplemental air transportation without interim cessation of the then-existing authority of the carriers involved.

This Department is of the opinion that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense. At the present time eight supplemental air carriers have executed civil reserve air fleet (CRAF) standby contracts which provide for the furnishing of air transportation on an international scale to the Department of Defense in the event of war or national emergency.

Of a total of 212 aircraft allocated by the Department's Defense Air Transportation Administration to the basic CRAF program, 40 have been allocated from supplemental air carrier inventories. In addition, the aircraft remaining in such air carrier inventories after CRAF requirements have been met (approximately 123 in number) are subject to DATA's allocation authority for purposes of DOD domestic wartime requirements, such as the Navy's quicktrans and the Air Force's logair operations, and for the needs of the civil economy under the war air service pattern program.

The Department also concludes that it would be unrealistic, as well as inherently unsound, for the continued existence of the supplemental air carriers to be entirely dependent in peacetime upon military business. Therefore, we agree that supplemental airlines should be eligible to operate their planes in peacetime in commercial air services.

The Department supports the purpose of these two similar bills but considers the provisions of H.R. 7318 as being more likely to achieve their desired aims. We recommend against the provision in H.R. 7512 that would give the supplemental carriers the right of first refusal in the operation

of all charter trips in interstate, overseas, and foreign air transportation. It is our view that such a provision would give the supplemental carriers an unwarranted competitive advantage over the regularly authorized air carriers and that it could cause undue burden on those persons desiring charter flights by limiting at the outset their choice of carrier.

Furthermore, the provisions in H.R. 7512 limiting the frequency of individually ticketed or individually waybilled

cargo operations to 192 flights per year appears to be arbitrary. We are of the opinion that H.R. 7318 gives authority to the Board to furnish the necessary protection without setting a limitation that may be harmful to the supplemental carriers, the regularly certificated carriers and the traveling public.

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

CIVIL AERONAUTICS BOARD,
Washington, D.C., June 20, 1961.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN WILLIAMS: While I agree with my colleagues on the Civil Aeronautics Board that legislation by the Congress is required to authorize the Board to issue certificates of public convenience and necessity for supplemental air transportation, I differ as to the type of certificates which the Board should be empowered to issue. I would urge the Congress to enact legislation authorizing the Board to issue supplemental certificates limited to the

operation of charter services only without regard to the other limitations in the act. This opinion is based upon my experience of over 10 years as a member of the Civil Aeronautics Board supported by statistics which indicate little need for supplemental air service other than charter operations.

As you and the members of your committee know, the need for this additional legislation has resulted from a reversal by the U.S. Court of Appeals for the District of Columbia Circuit (*United Air Lines, et al.* v. *C.A.B.*, 278 F. 2d 446) remanding the decision of a majority of the Board in the *Large Irregular Carrier Investigation*, docket No. 5132. Further court proceedings on this matter have been stayed pending the enactment of further legislation or the expiration of Public Law 86-661 enacted by the Congress last year to preserve the status quo for 20 months from July 14, 1960. In the *Large Irregular Carrier* case, the Board awarded certificates of public convenience and necessity to 23 former large irregular carriers to engage in interstate air transportation limited to 10 round trip flights per month between any 2 points carrying individual ticketed passengers or cargo, but unlimited as to charter flights. Further proceedings were ordered with respect to eight additional carriers. The 10-trip authority, for example, permits a carrier to operate 10 round trips monthly

between New York and Los Angeles in addition to 10 round trips per month between any other 2 points in the United States. The authority to operate between any two cities in the United States simultaneously is limited only by the availability of equipment by each carrier. With this au-

thority, the supplemental carriers could concentrate their operations in the heavy traffic markets on which the trunkline carriers depend for their financial success. Additional competition in route-type operations by a substantial number of supplemental carriers is certainly not required or necessary. The financial condition of the trunkline industry today as evidenced by the losses experienced by several of the carriers during the past year and the first quarter of 1961 shows that it cannot stand additional competition.

The certificated domestic air carrier route system links every major metropolitan area with each other and with more numerous smaller communities. The 11 trunkline carriers and the 13 subsidized local service carriers currently provide air service to 576 cities and towns in the continental United States. Thus the trade and vacation routes are more than adequately served by these route-type carriers which are required by law to render adequate service according to the needs of the communities.

The supplemental carriers enjoying the best financial condition today are for the most part those carriers which have through the years concentrated on developing the charter market rather than holding out to the individual ticketholder. For example, the Board's records show that for the year ending June 30, 1960, the supplemental carriers received operating revenues of $50,417,000 for their civilian and military charter sales while grossing transport revenues of $13,580,000 in operations other than charters. (These statistics do not include revenues of two carriers which are involved in enforcement proceedings for violations of their authority as large irregular carriers.) Of all the carriers operating supplemental services, 76

percent of the total noncharter revenues were received by only three carriers. Of these carriers, one is now bankrupt and another is operating only pending appeal of the Board decision denying it continuing authority. The third carrier although receiving 40 percent of its income from individual ticket operations, showed a net loss on all operations of $577,000 in 1960, and $1,350,000 in 1959.

A vast majority of the supplemental carriers, therefore, are not engaging in individual ticketing or waybill operations. In fact, 14 of these carriers engaged in no individual ticket or waybill operations during the 12 months preceding June 30, 1960. It is my conclusion, therefore, that since only a limited few carriers have used the individual ticket and waybill authority from 1955 to the present, little need exists for this type of service. If, at any time, an emergency should develop requiring the services of the supplemental carriers for purposes other than charters, the Board can invoke its authority under section 416(b) of the act to authorize such operations.

The Board has encouraged the supplemental carriers to develop the charter market by permitting these carriers to operate a charter exchange whereby a charter group is assured of the availability of an aircraft to suit its needs by negotiating with one central source which in turn has available the entire supplemental air carrier fleet. The Board disapproved a similar arrangement organized by the trunk-

line carriers to protect the supplemental carriers from unwarranted competition in developing the charter market. It is my firm belief that the future of the supplemental air carrier industry lies in the further development of the

charter market—and not in attempting to engage in route-type operations of any kind.

One additional point requires elaboration. One of the bills (H.R. 7318) under consideration proposes an amendment of section 401 of the Federal Aviation Act to authorize the Board to issue supplemental certificates for interstate, oversea, and foreign air transportation. It is urged that the amendment be limited to interstate operations only. Currently, the international routes to and from the United States are served by several U.S.-flag carriers who are competing with approximately 67 foreign air carriers. As a result of this competition, the market for the U.S.-flag carriers has decreased substantially each year for several years. In 1950 our flag carriers carried 74.7 percent of the market, but in 1960 carried only 54.7 percent of the total passenger traffic. Although the traffic in numbers of passengers has increased considerably during this period, unlimited competition by the supplemental carriers could very well cause the frequency and quality of our flag services to deteriorate. This in turn would seriously affect their financial condition.

The Board has certificated 10 all-purpose carriers to operate major international routes. Five of these carriers reported losses on their international operations for the years 1959 and 1960. The U.S. international all-cargo carriers are also experiencing severe financial difficulties as is an all-cargo carrier on an oversea route. The certification of an unlimited number of supplemental carriers in the international field may well pose a further threat to the financial condition of the existing carriers on these routes.

The large irregular carriers, predecessors to the supplemental air carriers, have had authority to operate cargo flights internationally, but few have sought to use this authority over the years. It is apparent, therefore, that little need exists for oversea or foreign supplemental air transportation of any kind and it is urged that such authority be deleted from the proposal.

Failure to include oversea and foreign supplemental air transportation in the proposed amendment does not mean that the supplemental carriers will be excluded from participation in either civilian or military international movements—as again the Board has ample authority under section 416(b) of the act to exempt air carriers for individual flights or for operations for a limited time for any national defense need or other emergency.

Respectfully submitted.

CHAN GURNEY.

DEPARTMENT OF THE AIR FORCE,
Washington, July 29, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 7512, 87th Congress, a bill to amend the Federal Aviation Act of 1958, as

amended, to provide for a class of supplemental air carriers, and for other purposes. The Secretary of Defense

has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of the proposed legislation is to amend the Federal Aviation Act of 1958 to provide for a class of supplemental air carriers, and for other purposes. This proposed legislation is similar to H.R. 7318, 87th Congress, on which a separate report has been written.

This proposed legislation has been brought about by virtue of a decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *United Air Lines, et al.* v. *Civil Aeronautics Board* (278 F. 2d 446 (1960)). (See 364 U.S. 297, where petition for certiorari was granted.) In that case the court found that the Civil Aeronautics Board's prior actions in certificating supplemental air carrier operations were legally deficient in three separate areas. The effect of the court's holding was that the Board did not possess the legal power to grant certificates of public convenience and necessity to authorize supplemental air transportation. Thus, those carriers who held certificates to engage in supplemental air transportation did not then have legal operating authority. As a stopgap measure Congress enacted Public Law 86-661, approved July 14, 1960, which measure was designed to preserve the supplemental air carrier industry for a period of 20 months, and until the matter could be studied more fully. The proposed legislation is designed to be of a permanent nature and, in effect, to replace the temporary stopgap legislation which allows the supplemental air carrier industry to operate for only 20 months from July 1960. In effect, the Board has found that supplemental air carriers have performed

a useful public service and that they have a definite place and role in meeting the Nation's air transportation requirements. The subject legislation, therefore, is designed to amend the Federal Aviation Act of 1958 in various respects in order that the Board can legally award certificates for supplemental air transportation to those carriers who would be eligible for such authority under the proposed legislation.

The amendments proposed in H.R. 7512 to the Federal Aviation Act of 1958 are all amendments of a technical nature designed to give the Board appropriate legal authority to issue certificates to carriers for supplemental air transportation. These proposed technical amendments include a so-called "grandfather" provision which would authorize the issuance of a certificate for supplemental air transportation to those carriers who were previously authorized to engage in such transportation (see line 5 and following on p. 3 of H.R. 7512).

The continued existence of the irregular air carrier fleet is of real value in terms of national defense and it is evident that the future ability of the irregular air carriers to service the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military. In this regard, the current (April 1, 1961) allocation of aircraft to the civil reserve air fleet (CRAF) program shows that there are 8 supplemental air carriers participating in this program which now includes 22 air carriers.

The Department of the Air Force, on behalf of the Department of Defense, has no objection to the enactment of

H.R. 7512, but defers to the views of the Civil Aeronautics Board concerning the technical details of the bill.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOSEPH S. IMIRIE,
Assistant Secretary of the Air Force.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., June 20, 1961.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We reply to your request for reports on H.R. 7318 and H.R. 7512 proposing to authorize the Civil Aeronautics Board to issue certificates of public convenience and necessity to "supplemental air carriers."

Each of these bills would amend the Federal Aviation Act by authorizing the Civil Aeronautics Board to issue certificates of public convenience and necessity to "supplemental air carriers." The bills differ, however, in the specific type of service which could be authorized by the Board in the certificates granted to "supplemental air carriers." H.R. 7512 does not include authorization for the transpor-

tation of mail. H.R. 7318, on the other hand, would permit the Civil Aeronautics Board to grant "supplemental air carriers" authority to transport mail.

To date the supplemental air carrier operations authorized by the Civil Aeronautics Board have not included any grant of authority to transport mail. Nor has the Department ever supported any such grant of mail authority in view of the very limited special type of operation that is characteristic of a supplemental air carrier service. No use would be made of this type of limited operation for the transportation of mail except under very extraordinary circumstances.

We have no objection to the enactment of this legislation; however, the use of "supplemental air carriers" as provided for in H.R. 7318 would be feasible for mail transportation only under extraordinary circumstances since they would not be operating a daily point-to-point type of service.

We have been advised by the Bureau of the Budget that from the standpoint of the administration's program there is no objection to the presentation of the report to the committee.

Sincerely yours,

J. EDWARD DAY, *Postmaster General.*

Senate Report No. 688
87th Congress, 1st Session

AMENDMENTS TO THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR A CLASS OF SUPPLEMENTAL AIR CARRIERS

AUGUST 8, 1961.—Ordered to be printed

Mr. MONRONEY, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 1969]

The Committee on Commerce, to whom was referred the bill (S. 1969) to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment, in the nature of substitute, is as follows:

Strike out all after the enacting clause and insert the following:

That (a) section 101 of the Federal Aviation Act of August 23, 1958, as amended, is amended by redesignating paragraphs (13) through (31) as (14) through (32) and inserting therein a new paragraph to read as follows:

---

* Numbers within dashes, used on the right, are the original page numbers of the document. These are the numbers referred to in Petitioners' Brief.

"(13) 'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour."

(b) Section 101 of the Federal Aviation Act, as amended, is further amended by redesignating paragraphs (32) and (33) as (35) and (36), respectively, and inserting therein two new paragraphs to read as follows:

"(33) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(34) 'Supplemental air transportation' means charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act."

SEC. 2. Section 401 of the Federal Aviation Act is amended by adding to subsection (d) thereof a new paragraph (3) to read as follows:

"(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate, to any applicant not holding a certificate under paragraphs (1) or (2) of this subsection, authorizing the whole or any part of the transportation covered by the application, and for such period, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board thereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to the type of supplemental air transportation for which authority is sought, including the nature of the public need therefor and the extent to which the applicant will be required to provide such air transportation.

"(ii) Any certificate issued pursuant to this paragraph authorizing individually ticketed or waybilled service shall contain such limitations, including the term thereof, as the Board finds are required to insure that such service will not result in significant diversion of traffic from any air carrier authorized to render service between the same points by a certificate or certificates of public convenience and necessity issued pursuant to paragraphs (1) and (2) of this subsection."

SEC. 3. Subsection (e) of section 401 of the Federal Aviation Act is amended to read as follows:

"TERMS AND CONDITIONS OF CERTIFICATE

"(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

"(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

"(3) A certificate issued under this section to engage in supplemental air transportation shall, with respect to charter service, designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within or between which service may be rendered.

"(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public

shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3)(ii) of this section.

"(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter service of any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board."

SEC. 4. Clause (3) of section 406(b) of the Federal Aviation Act is amended by inserting after "each such air carrier" the words "(other than a supplemental air carrier)".

SEC. 5. Title IV of the Federal Aviation Act is amended by adding at the end thereof a new section to read as follows:

"SPECIAL OPERATING AUTHORIZATIONS

"Authority of Board To Issue

"SEC. 417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—

"(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

"(2) that there is a temporary requirement for air transportation between two points one or both of which is not regularly served by any air carrier; and

"(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental carrier a special operating authorization to engage in air transportation between such points.

"Terms of Authorization

"(b) A specal operating authorization issued hereunder shall—

"(1) contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which would otherwise exist, without significant diversion of traffic from the holders of certificates for the route;

"(2) be valid for not more than thirty days and extended not more than twice; and

"(3) not be deemed a license within the meaning of the Administrative Procedure Act (5 U.S.C. 1001, et seq., as amended).

"Procedure

"(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved."

SEC. 6. Section 901(a) of the Federal Aviation Act of 1958 is amended to read as follows:

"CIVIL PENALTIES

"Safety, Economic, and Postal Offenses

"SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or

order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided,* That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

"(2) Any such civil penalty may be compromised by the Administrator in the case of violations of title III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of title IV and VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged."

SEC. 7. (a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show—

(1) that it, or its predecessor in interest was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Order E-13436, adopted January 28, 1959, or Order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board Order E-9744 of November 15, 1955, and has pending before the Board an application for certification as a supplemental air carrier which was filed prior to July 14, 1960;

(2) that between January 1, 1960, and May 25, 1961, the applicant or his predecessor in interest lawfully performed either (A) any portion of the service authorized by the certificate or interim operating authority, or (B) any operations for the Military Establishment of the United States;

(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this Act: *Provided,* That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect, notwithstanding a pending judicial review of such order; and

(4) that such certificate or interim operating authority is held by the original grantee or has been transferred with Board approval pursuant to section

401(h) of the Federal Aviation Act: *Provided,* That application under this paragraph may also be made by a person who on the date of enactment hereof had on file an application to the Board for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, in which case the Board shall extend the authority hereunder if it approves the transfer pursuant to section 401(h) of such Act;

the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's certificate or interim authority and subject to the terms, conditions, and limitations attached thereto pending issuance or denial of a certificate pursuant to section 401(d)(3) of such Act authorizing the whole or any part of the transportation covered by the application.

(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act for a certificate for supplemental air transportation within 30 days after the date of enactment of this Act shall show that it or its predecessor has received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74 Stat. 527), the Board, upon proof of such facts, shall issue new interim authority to such applicant to engage in supplemental air transportation to the same extent authorized in the applicant's interim authority and subject to the terms, conditions, and limitations attached thereto pending issuance or denial of a certificate

pursuant to section 401(d)(3) of such Act authorizing the whole or any part of the transportation covered by the application.

SEC. 8. (a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States either by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Order E-13436, adopted January 28, 1959, or Order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74 Stat. 527), it may perform operations under its existing authority for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act within said thirty days, until the Board has granted or denied interim authority under section 7 of this Act. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board Order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, may continue to operate in interstate air transportation under its existing authority for thirty days from the date of enactment of the Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act within said thirty days, until the Board has granted or denied interim authority under section 7 of this Act. The

certificates of public convenience and necessity issued by the Board pursuant to Order E-13436 adopted January 28, 1959, and Order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to section 1(2) of Public Law 86-661 of July 14, 1960 (74

—5—

Stat. 527), and the exemption authority issued by the Board under Order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under order E-10161 of April 3, 1956, shall terminate on the date of an order of the Board granting or denying interim authority under section 7 of this Act, or if the carrier files no application under section 401(d)(3) within 30 days from the date of enactment of this Act, at the end of said 30-day period. Any carrier whose operating authority in interstate air transportation under Board Order E-9744 is continuing solely by virtue of a judicial stay of a Board Order which would otherwise terminate such operating authority, is hereby authorized to continue to operate, subject to all conditions and limitations contained in Order E-9744 or imposed by the court, until the court shall lift such stay or until the final disposition of judicial review proceeding, whichever shall first occur.

(b) The provisions of this Act shall in no way affect any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Order E-13436 or Order E-14196 or against the holder of interim authority issued under section a(1) of Public Law 86-661 pending before the Board on the date of enactment of Public Law 86-661 or

this Act, or the power of the Board to institute any enforcement or compliance action against such holder subsequent to the date of enactment of this Act with respect to violations of the Federal Aviation Act or provisions of the certificate or interim authority or the Board's regulations which may have occurred prior to such date. Any sanction which the Board might lawfully have imposed on the operating authority of an air carrier for violations occurring prior to the extension of its authority under section 7 or the issuance to such carrier of a certificate of public convenience and necessity for supplemental air transportation under section 401(d)(3) of the Federal Aviation Act may be imposed upon such extension of authority or certificate issued to such air carrier.

(c) Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 et al., shall be deemed to have been finally disposed of upon the date of enactment of this Act.

Amend the title so as to read:

A bill to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes.

SUMMARY OF THE BILL

The present measure would make it clear that a carrier may request and be authorized to perform limited services supplemental to those furnished by the regular air carriers and would authorize the Board to issue certificates of public convenience and necessity for supplemental service

containing limitations on the type and extent of service authorized. This authority was requested by the Civil Aeronautics Board as a result of the decision of the U.S. Court of Appeals for the District of Columbia in *United Airlines et al.* v. *Civil Aeronautics Board,* which determined that the Board lacked authority under existing law to issue limited certificates.

The bill would (1) grant statutory interim operating rights, in the nature of temporary "grandfather" rights, to existing holders of supplemental air carrier certificates who have performed a portion of the service authorized by their present certificates, (2) make clear that a supplemental certificate is primarily a certificate for charter service and provide that the Board may, when the public convenience and necessity requires, also authorize individually ticketed service, (3) make clear that supplemental air carriers are not eligible for subsidy payments, (4) permit the Board to issue a special operating authorization for temporary service between particular points during periods when regular service is inadequate, (5) permit the Board to impose civil penalties for violations of title IV of the act relating to economic regulations, (6) amend the act to provide for a statutory definition of charter service,

—6—

(7) make clear that a regularly certificated carrier cannot also be certificated as a supplemental carrier, and (8) enable the Board to make a determination of fitness based upon considerations peculiar to the type of supplemental transportation for which authority is sought.

Senate Report No. 688

HEARINGS

Your committee conducted hearings over a period of 3 days and received testimony from the following witnesses: Senators John Sparkman and Howard W. Cannon; Alan Boyd, Chairman, Civil Aeronautics Board; Robert Fraley, Quaker City Airways, Philadelphia, Pa.; and Mantz Air Services, Burbank, Calif.; Jesse Stallings, president, Capitol Airways, Nashville, Tenn.; Dr. Ralph Cox, Jr., president, U.S. Overseas Airlines, Wildwood, N.J.; George Patterson, president and general manager, President Airlines, Inc., Burbank, Calif.; Reed Pigman, president, American Flyers, Fort Worth, Tex.; Alfred Blatz, president, Blatz Airlines, Burbank, Calif.; Angus McDonald, assistant director, National Farmers Union, Washington, D.C.; Stuart Tipton, Air Transport Association, Washington, D.C.; James Anton, Quaker City Airways; Clayton L. Burwell, president, Independent Airlines; Robert E. Commerce, president, Airline Dispatchers Association; and Robert C. Goodman, Saturn Airways. With the exception of the Air Transport Association and the Airline Dispatchers Association, all witnesses strongly supported the objectives of the bill.

SECTION-BY-SECTION ANALYSIS

Section 1

This section would amend section 101 of the Federal Aviation Act to include additional statutory definitions. "Charter service" would be defined as air transportation where the entire capacity of one or more aircraft has been

engaged on a time, mileage, or trip basis, but specifically excluding transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides, or offers to provide, transportation services to individual members of the general public other than as a member of a group on an all-expense-paid tour. This definition would be applicable to all certificated air carriers including both route carriers and supplemental carriers.

"Supplemental air carrier" would be defined as an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"Supplemental air transportation" would be defined as charter service and other air transportation rendered pursuant to a supplemental certificate.

Section 2

Subsection 401(d) of the act would be amended by adding a new paragraph which would authorize the Board to issue a certificate to engage in air transportation as a supplemental air carrier to any applicant other than certificated route carriers. The Board could authorize the whole or any part of the transportation covered by the application, and authorize it for such periods, as the public convenience and necessity may require, provided

the applicant is found to be fit, willing, and able to properly perform such transportation. This provision would permit the Board to make a finding of fitness on the basis of the type of supplemental transportation for which authority is sought. The Board would be permitted to authorize

individually ticketed or waybilled services but would be required to include in the certificate such terms and limitations as it finds are necessary to insure that such services will not result in significant diversion of traffic from the certificated route carriers authorized to render service between the same points.

Section 3

Section 401(e) of the act would be amended to permit the Board, in issuing certificates for supplemental air transportation for charter service, to designate terminal or intermediate points only insofar as the Board deems practicable and otherwise permits the Board to designate only the geographical area, or areas, within or between which service may be rendered.

Individually ticketed operations would be permitted only between designated points.

The Board would be permitted to impose terms, conditions, or limitations as to frequency of schedules and as to equipment in a supplemental certificate to insure that such individually ticketed service is supplemental to the service being provided by the certificated route carriers. Such limitations are prohibited in certificates issued to route carriers. This section would continue the present authority of a certificated route carrier to perform charter service under regulations prescribed by the Board.

Section 4

Section 406(b) of the act would be amended to specifically exclude supplemental air carriers from eligibility for subsidy.

Section 5

A new section 417 would be added at the end of title IV of the Act to permit the Board to issue "special operating authorizations" to supplemental air carriers. Such authorizations would be limited to periods when the capacity of the certificated route carriers was insufficient to meet the requirements of the public or the postal service. Certificated route carriers would not be eligible to receive such authorizations. Specifically, the Board could issue this special operating authorization upon a finding that (1) the service of a certificated route carrier is temporarily insufficient to meet the requirements of the public or the postal service, (2) there is a temporary requirement for transportation between two points, one or both of which is not regularly served by any air carrier, and (3) any supplemental air carrier can supply the additional service temporarily required in the public interest.

Such authorizations must contain limitations as to frequency and types of equipment so as to assure that the service authorized will alleviate insufficiencies which would otherwise exist without significant diversion of traffic from certificated route carriers. The authorization would be limited to 30 days. However, the Board would be permitted to extend it, but not more than twice. The authorizations would not be deemed licenses within the meaning of the Administrative Procedures Act.

The Board would be required to establish procedures for the expeditious investigation and determination of requests for such authorizations. The bill would require written notice to air carriers certificated to provide service between

the points involved and afford such carriers the opportunity to protest the application in writing. This section contemplates that procedures will be adopted so as to avoid undue delay in the issuance of special operating authorizations and that the Board shall take into account in investigating such applications the degree of emergency involved.

Section 6

Section 901(a) would be amended to give the Board jurisdiction to impose the same civil penalties for violations of the economic provisions of the act as are now provided for violations of other provisions of the act. This jurisdiction would extend to all of the provisions of title IV and would include violations by the certificated route carriers as well as those committed by the supplemental air carriers and other persons.

Section 7

This section would require the Board to issue interim operating authority in the nature of temporary grandfather rights to any applicant who, within 30 days following enactment of this legislation, applies for a supplemental certificate and shows: (1) That it has been authorized to engage in supplemental air transportation, by certificate, interim operating authority, or exemption; (2) that it has operated under the authority or performed transportation for the Military Establishment; and (3) that this authority has not been terminated or expired. Upon proof of these facts, the Board would be required to issue interim authority of the applicant to engage in supplemental air trans-

portation to the same extent authorized in the applicant's present certificate or authority until the Board disposes of its applications under section 401(d)(3)—the new provision for supplemental certificates effective upon enactment of this bill.

This section also contains a provision which would enable a carrier who received interim operating authority under Public Law 86-661 to qualify automatically for the grandfather interim authority.

Section 8

This section would permit any supplemental carrier who previously received a certificate or interim operating authority under Public Law 86-661, to continue its operations under existing authority for 30 days after enactment of the bill, and, if it has filed an application under section 401(d)(3) for a supplemental certificate within said 30 days, to continue to operate until the Board passes upon its request for the interim authority provided for in section 7 of the bill.

This section also has a similar provision for those carriers who were not certificated but were still authorized to conduct interstate air transportation as a supplemental carrier pursuant to the Board's original exemption order, and who (1) had an application pending before the Board for a certificate on July 14, 1960, and (2) filed an application for a certificate under section 401(d)(3) within 30 days after enactment of the bill. This latter provision is designated to continue the operations of only those supplemental carriers who received authority under Order E-9744 whose ap-

plications for a certificate in Docket 5132 have not yet been finally disposed of by the Board.

Section 8(a) also contains a provision which would cancel *(a)* the certificate previously issued to the supplemental carriers by Order E-13436 and Order E-14196, *(b)* any interim operating authority issued under Public Law 86-661, and *(c)* the exemption authority issued under Order E-9744 or prior orders. Such authorizations would terminate on the date of an order of the Board granting or denying grandfather rights—i.e., the interim authority provided for in section 7. If the carrier did not file an application under section 401(d)(3) within 30 days after enactment of the bill, such authorization would terminate 30 days after enactment.

In addition, a provision is included to permit the continuation of those supplemental carriers operating under Order E-9744 which are operating solely by virtue of a judicial stay of a Board Order revoking their authority. Their operations would continue until the court lifts such stay or until final disposition of judicial review, whichever occurs first.

Section 8(b) would preserve the Board's power to institute enforcement proceedings for violations which occurred before enactment of the bill. It would also permit the Board to impose sanctions for past violations, either upon the interim extensions of authority issued under section 7 or upon new certificates issued pursuant to section 401 (d)(3).

Section 8(c) would clear the Board's docket of applications filed in docket 5132 by declaring that they shall be deemed to have been finally disposed of upon the date of enactment of the bill.

Senate Report No. 688

BACKGROUND

The origin of the supplemental air carrier industry traces back to the period shortly following the enactment of the Civil Aeronautics Act of 1938. It was during this period that the Board issued an exemption order authorizing nonscheduled operations. Initially, and up until the end of World War II, nonscheduled operations were generally conducted with aircraft of smaller size than those utilized by the certificated route carriers. Following the end of World War II surplus transport-type aircraft became available and were acquired in significant numbers by the nonscheduled operators. With larger aircraft of increased capacity their cargo and passenger operations substantially expanded. As a result, the Board, in 1947, revised its exemption regulations to require letters of registration as condition precedent to operations and to distinguish between operators of transport-type aircraft and operators of small aircraft, which were termed, respectively, "large irregulars" and "small irregulars."

The large irregular carriers were precluded from operating "regularly or with a reasonable degree of regularity." Under criteria and regulations prescribed by the Board, the carriers could operate between 8 and 12 flights per month between the same 2 points. Charter, individually ticketed, and waybilled flights were all counted in determining whether operations between the same two points were excessive. Operations were permitted in interstate, oversea, and foreign air transportation for the carriage of property and in other than foreign air transportation for the carriage of persons.

Subsequent changes in the regulations proved inadequate to meet the various problems confronting the Board in its effort to satisfactorily determine the appropriate role of the nonscheduled carriers. As a result, in 1951 the Board instituted the large irregular air carrier investigation, Docket 5132, to determine:

(1) Their role in the air transportation system and the extent of the operations which should be permitted;

(2) The carriers which were to receive authority; and

(3) Whether the authorization should be by certificate or exemption.

After protracted hearings, with some 30 applicants still to be heard, the Board in 1954 determined it was necessary to expedite the proceeding by first deciding the issue as to the role of the carriers and the scope of their operations, leaving for future decision the remaining two issues. As a result, on November 15, 1955, in Order E-9744, the Board found that irregular carriers comprise a "separate class of carriers" performing varied and flexible services, and being "unhampered and unrestricted by schedule and route requirement * * * make themselves available to serve whenever and wherever the demand exists." The Board further found that their operations would not adversely affect the regular route carriers and that unlimited charter authority should be granted, together with individually ticketed authority not to exceed 10 flights per month in the same direction between any two points. The 10-flight limitation was derived from an average of the 8 to 12 flights permitted

under the prior regulations. Its purpose was to remove uncertainties as to the extent and scope of operations permitted, with the resulting and obvious benefits to the carriers and the Board in administration and enforcement.

The Board decided to grant new authority to all members of the class on an interim exemption basis pending its final decision as to the qualifications of individual carriers and as to whether the final authorization should be by certificate or exemption.

The order granting interim exemption authority was set aside by the Court of Appeals for the District of Columbia Circuit on July 19, 1956, on the ground that the Board had not made sufficient subsidiary finding to sustain the statutory finding required for exemption that a requirement for certification would be an undue burden on the carriers. A petition for writ of certiorari was denied by the Supreme Court. On December 21, 1956, the court of appeals stayed the issuance of its mandate until 60 days after the date of final Board decision in Docket 5132.

On January 28, 1959, in Order E-14196 the Board granted temporary certificates of public convenience and necessity for supplemental air service to 23 carriers found by the Board fit to receive them. Subsequently, on July 8, 1959, in Order E-14196, the Board issued two additional certificates. These 25 certificates authorized the supplemental carriers to render unlimited planeload charter service and to conduct, without specified terminal or intermediate points, individually ticketed flights not to exceed 10 between the same 2 points during any month. Authority was limited to operations conducted in interstate air transportation. Applications of five other carriers remained to be decided pending further consideration of their qualifications.

The Board's decision was contested and the U.S. Court of Appeals for the District of Columbia found, in *United Air Lines et al.* v. *Civil Aeronautics Board,* that the order of January 28, 1959, was legally deficient in three respects:

1. The certificates issued by the Board do not specify the terminal and intermediate points between which air transportation is authorized but grant a blanket authorization to operate between any two points in the United States.

2. The certificates issued by the Board contain a limitation of 10 flights per month in the same direction between the same two points. In the opinion of the court, this limitation was in violation of section 401(e) of the act which provides:

"No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules * * *"

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out—one judge dissenting—the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations. It would thus appear that the court's standard of fitness that each carrier must establish would be greater than that found by the Board to be necessary for supplemental service.

In view of the fact that it was the same court which, on July 19, 1956, had invalidated the Board's efforts to authorize supplemental air transportation by means of an exemption order, it became a serious question whether supplemental carriers could operate under either exemption or certificate of authority. Consequently, the Board, on April 28, 1960, submitted to Congress proposed legislation (S. 1543 and H.R. 7593) to provide the authority which the court found the Board lacked.

Your committee favorably reported S. 1543, with amendments, on June 13, 1960. However, the House Interstate and Foreign Commerce Committee in its report (No. 1877) of June 15, 1960, stated that it did not have sufficient time to adequately study the entire question of supplemental air transportation, and recommended enactment of temporary legislation to maintain the status quo for 1 year since without immediate action by Congress, the supplemental carriers might not be able to continue operating. Thereafter, Congress enacted Public Law 86-661, approved July 14, 1960, granting temporary operating authority to the supplementals until March 14, 1962.

BASIC CONCEPTS

The Civil Aeronautics Board has always treated the supplemental carriers as a class, each member of which was given substantially identical authority—the right to provide charter service and to perform no more than 10 scheduled trips a month between any two points. As a matter of fact, the type of operations conducted by these carriers

has been almost as varied as the number of carriers. Many have performed charter operations for the Military Estab-

lishment. Others have derived almost their total revenue from civil charter. A few have conducted fairly balanced operations, deriving substantial revenues from military charter, civil charter, and scheduled passenger service.

There is also great variation in the capability of these carriers, in their financial resources and in the number and types of aircraft which they own and operate. Many have operated continuously and grown steadily. Others have operated only sporadically or on a very limited scale. To some extent, these variations reflect the differences in interest, experience, and managerial skill of their owners.

The committee is aware that to some extent these carriers must be treated as a class. All of them are certificated to provide transportation to supplement the existing air transportation system, which will be based in the future as it has been in the past on scheduled route carriers. Under the committee bill, many aspects of this class characteristic are retained. None of these carriers will be eligible for subsidy. None of them will be permitted to provide scheduled service except subject to limitations of a type which could not be imposed by the Board on scheduled route carriers. All of them will probably depend for a substantial part of their revenue on charter operations. They have had and will continue to have problems and perform services distinct from the scheduled route carriers.

However, the committee has carefully analyzed the reports of all of these carriers to the Board over the past few years. It is impressed by their variety and is convinced that they will achieve a permanent and stable place in our air transportation system only when the Board begins to issue individual certificates more specifically de-

signed for the individual carrier. It is only by this means that the Board can insure that each piece which it fits into the mosaic of the supplemental industry will properly contribute to the final total picture.

In deciding what authority should be given each carrier the Board should certainly start with what the carrier wants to do; what its experience has been; what its capability is in terms of financing, personnel, and equipment. A supplemental industry constructed on this basis requires courage and imagination on the part of the carriers in developing and proposing how they can best serve the public interest. It requires on the part of the Board a sense of liberality and experimentation and a willingness to undertake a trial, even at the cost of occasional error.

CHARTER SERVICE

Every witness who discussed the subject in the hearings on this measure agreed that the basic role of the supplemental carriers is the provision of charter service. Even the spokesman for the Air Transport Association, representing the scheduled route carriers, while strongly opposing any authority for the supplemental carriers to perform scheduled service, supported the supplemental carriers being given charter authority. The supplemental carriers themselves were unanimous in their view that charter service represented both their greatest potential contribution to air transportation and their greatest potential source of revenue. A substantial part of their revenues in

the past have come either from civil charter or charter service performed under contracts with the Military Establishment of the United States.

Senate Report No. 688

The keystone of the committee bill is the concept that the authority to provide charter service should be the basic ingredient of a certificate as a supplemental air carrier. The committee has defined "supplemental air transportation" to mean—

> charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) * * *.

The committee has also defined "charter service" as being "air transportation" which under section 401 of the Federal Aviation Act no air carrier can perform except pursuant to a certificate issued by the Board.

Because the committee is convinced that individual certificates as a supplemental air carrier must be tailored to the public need and to the capability and interests of the particular carrier, the bill does not require the Board to grant every supplemental carrier any particular charter authority. The Board is specifically authorized to designate the geographical area or areas within or between which charter service may be rendered. The charter authority of one carrier may be quite different from that provided to another, but charter authority remains in the view of the committee the basic, if not absolutely indispensable, ingredient of the supplemental certificate. It is the type of service which most clearly supplements the scheduled route service provided by other carriers.

The committee is also strongly of the opinion that the Board's practice of routinely permitting continual large-

scale charter operations by exemption is not only unwise, but illegal, because not within the "unusual circumstances" contemplated by section 416. The committee hopes that henceforth charter service will be provided by the certificated carriers authorized to provide it and not provided under an exemption by anyone who professes a desire to do so.

A charter, by common law and general practice in the transportation industry, means essentially the lease of the entire vehicle, in this case the aircraft, for a period of time or for a particular trip. Because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter, particularly in international air transportation, the committee has incorporated the common law definition of charter in the statutory definitions contained in the Federal Aviation Act. The bill thus provides that—

> "charter service" means air transportation * * * where the entire capacity of one or more aircraft has been engaged * * * on a time, mileage or trip basis * * *.

However, it is not the intention of the committee to permit individually ticketed service to be offered to the general public under the guise of charter. The proposed statutory definition, therefore, provides that charter shall not include such individually ticketed service whether offered by an air carrier directly or by a travel agent.

This restriction is subject to one exception because there is one circumstance in which a carrier or travel agent may

offer the services to individual members of the public and still conform to the traditional concept of charter. This is

in connection with an all-expense-paid group tour. If a travel agent charters an aircraft for an all-expense-paid tour and then offers to individual members of the public the right to participate as a member of the group, this is a very different sort of service from individually ticketed transportation.

The proposed statutory definition incorporates this exception by providing that charter shall not include transportation offered to individual members of the general public "other than as a member of a group on an all-expense-paid tour." The committee has received representations that this exception is open to the abuse that it might be used as a guise to offer individually ticketed service. However, the Civil Aeronautics Board has ample authority, because of its power to specify the terms, conditions, and limitations of the certificate under section 401 and its general power to make any necessary rules or regulations to carry out the provisions of the act under section 204. to prevent any violation of the clear intent of the statute. This the Board can accomplish by specifying in its regulations the minimum requirements which must be met before the service offered qualifies under the statutory exception.

However, several members of your committee have expressed the desire that the Board submit reports setting forth its experiences in administering the provision pertaining to all-expense-paid tours. Accordingly, your committee requests the Board to report annually on this subject for the next 3 years, either in a separate report or in its annual report to the Congress. If the Board's experience in administering this section should demonstrate that additional statutory authority is necessary, your committee

will expect the Board to incorporate appropriate recommendations to that end in its report.

INDIVIDUALLY TICKETED SERVICE

A far more controversial aspect of the present authority of supplemental carriers is their right to sell individual tickets for scheduled service subject to the limitation that not more than 10 trips per month be performed between any two points. The scheduled route carriers have expressed grave apprehension over this authority.

One of the principal reasons which the court assigned in its opinion in *United Airlines* v. *C.A.B.* for invalidating the Board's action in granting supplemental certificates was that they permitted operations between points selected by the carrier and did not specify the terminal points between which the carrier was authorized to engage in air transportation as required by section 401(e) of the act. The limitation on the number of trips, in lieu of specifying the terminal points, was likewise held by the court to violate the provision of that subsection prohibiting the Board from placing a limitation in a certificate restricting the right of an air carrier to add to or change schedules. The bill originally submitted by the Board had as its primary purpose amendment of the act to permit the Board to grant just this kind of a certificate to supplemental air carriers, that is, authority to provide a limited number of trips between any two points without specifying them.

The committee has determined that the act should not be amended to permit the Board to issue a certificate authoriz-

ing scheduled service without specifying the terminals, although it has relieved the Board of this necessity with

reference to certificates authorizing charter service. The committee recommends this position for two reasons. First, the points between which there is a demonstrable need and a ready market for supplemental air transportation are sufficiently limited that it appears perfectly feasible for the Board to specify these terminals in the certificate. Second, only by specifying where such service will be provided and which supplemental carriers shall furnish it can the Board insure that a large number of carriers will not elect to furnish service between the same points with possible serious effect upon the scheduled route carriers certificated to render service between such points.

The committee has provided the Board with authority to limit the number of schedules or the type of equipment employed by a supplemental air carrier, adopting in this regard the amendment offered by Senator Morris Cotton. The proposed new paragraph 3 of subsection 401(d) is thus amended to provide that any supplemental certificate which authorizes individually ticketed service shall contain such limitations, including limitations as to the term of the certificate, as the Board finds are required to insure that the service will not result in significant diversion of traffic from any scheduled route carrier certificated to serve between the same points. Section 401(e) is amended to permit the Board to impose such terms and conditions in a supplemental certificate as are required by the foregoing provision.

Both the Civil Aeronautics Board and the supplemental air carriers made strong representations to the committee in the hearing that such limited scheduled service to supplement that provided by the regular carriers served a

real public need, was essential to the continued survival of the supplemental industry, and had resulted in no demonstrable injury to the scheduled carriers. It is the committees considered view that the Board should be empowered to provide this type of operating authority and that the limitations contained in the committee amendment as described above insure that such operations will in fact supplement and not undermine the scheduled air transportation system.

TEMPORARY REQUIREMENT FOR SUPPLEMENTAL SERVICE

The committee concluded as a result of its hearings that neither the type of certificates heretofore issued to the supplemental carriers nor the more specialized certificates contemplated under the committee bill were well adapted to provide supplemental air transportation to meet a temporary need for additional service, such as that which frequently occurs between major traffic points during holiday seasons. Neither were they well adapted to meet the need for temporary service to points, such as resort areas, not regularly served by any air carrier but which might require service for a brief period during a particular season of the year.

Therefore, in section 5 of the bill the committee proposes the addition of a new section 417 of the Federal Aviation Act providing for "special operating authorizations" to meet these situations. That section would provide that if the Board finds that the air transport capacity being offered between particular points is or will be temporarily insufficient to meet the needs of the public or the postal

service, or that there is a temporary requirement for air

transportation between two points one or both of which is not regularly served by any air carrier, it may issue such special operating authorization to a supplemental air carrier to provide service between those points.

The new section would require that such an authorization contain limitations as to the amount of service or the type of equipment used to assure that it will eliminate the shortage without significant diversion of traffic from the carriers holding certificates for the route. The section provides that such authorization shall be for not more than 30 days, but can be extended for like periods not more than twice.

It is the committee's intention that the Board should take steps to keep itself informed as to the need for such temporary additional service. The committee believes that it is practical for the Board to maintain representatives at key traffic centers during some or all of each year whose responsibility it would be to advise the Board of any actual or anticipated shortage of capacity so that the Board could immediately issue the necessary authorization to provide temporary additional service.

The Board is directed to establish a procedure for expeditiously handling these situations. It is required to give written notice to the air carriers certificated to provide service between the points involved and to provide an opportunity for such carrier to protest the issuance of such operating authorization in writing. Whether the carrier would be heard orally in support of the protest would be a matter for the Board's discretion, taking into account the degree of emergency involved in meeting the shortage.

The committee believes that a conscientious effort to make maximum use of this section will provide the Board with greater flexibility in meeting seasonal traffic peaks than it has ever had heretofore, and that it will also provide the supplemental air carriers with an effective means of providing a needed public service to supplement the existing air transportation system. The committee believes that there is no provision of the bill which, if properly used, would contribute more directly to providing the public with more convenient and adequate air transportation.

THE ENFORCEMENT PROBLEM

One cause for apprehension as to the possible adverse impact on the scheduled industry of the supplemental carriers, which was reflected in the committee's hearings, was the difficulties which have been encountered by the Board in effectively enforcing the limitations on supplemental operations which it has imposed in past orders. There have been rather notorious examples of supplemental carriers entering into illegal combinations resulting in a de facto pooling of their operating rights to provide scheduled service of far greater frequency and regularity than had been authorized by the Board. Efforts of the Board to end such practices by cease-and-desist orders or revocations of authority have been frustrated by protracted appeals to the court during which the Board's orders have been stayed. This has permitted the continuation of palpably illegal but highly profitable operations by carriers using every conceivable means to delay the inevitable legal sanction.

Such operations have never been conducted by more than a handful of supplemental carriers. The vast number of

such carriers have probably suffered more from such activities than have the scheduled carriers, for they have found it impossible to compete on a legal basis, offering a severely limited number of trips, with carriers who have illegally combined to provide daily scheduled service. Unfortunately, they have probably suffered even more from the less tangible damage done by such operations to the reputation of the supplemental industry. It is implicit in the committee's action on this bill that it regards the vast majority of supplemental air carriers as responsible, safe, and useful operators who have made and will continue to make a major contribution to the development of air transportation, and particularly to national defense. The committee is determined that the supplemental industry, as well as the scheduled industry, be more effectively protected from the depredations of illegal operators.

In recommending the means to accomplish this end the committee has accepted the recommendations of the Civil Aeronautics Board, made continually over several years, that the civil penalties now provided in the Federal Aviation Act for violations of safety and other provisions of the act be made applicable to violation of the economic provisions under title IV and of certificates issued thereunder. Section 901 of the act now provides a civil penalty not to exceed $1,000 for each violation and provides that in the case of a continuing violation each day shall constitute a separate offense subject to the $1,000 penalty. The committee bill would amend this section to make it applicable to the provisions of title IV and certificates issued

thereunder, and would thus provide the Board with the weapon it has lacked—the ability to take the profit out of illegal operations performed over a long period of time under a judicial stay.

THE GRANDFATHER PROVISIONS

The grandfather provisions as amended by the committee are designed to permit the existing supplemental carriers to operate until such time as the Board can issue new certificates conforming to the principles heretofore discussed. The committee regrets that the grandfather provisions cannot be more simply stated than they are in sections 7 and 8 of the bill. Their complexity is the result of an unbelievable hodge-podge of exemptions, orders, and stays which have marked the Board's activity in connection with the supplemental air carriers. The committee believes that the provisions of sections 7 and 8 will have the effect of clearing the accumulated debris without injustice to the carriers that have been more its victims than its beneficiaries.

Section 8 of the bill requires any carrier desiring to continue to operate in the future as a supplemental air carrier to file a new application under section 401(d)(3) seeking such certificate within 30 days from the time of enactment of the bill. If no application for a new certificate is filed within that period, the carrier's present authority will terminate, whether derived from an exemption, a certificate, or interim operating authority under Public Law 86-661. Any carrier which files an application for a certificate within 30 days is permitted to continue to operate under its present authority until the Board acts under section 7

of the bill. When the Board acts under section 7, the existing authority of a carrier will terminate, whether that authority is derived from a certificate, an exemption, or interim operating authority under Public Law 86-661.

—18—

If a carrier files a new application for a certificate as a supplemental air carrier under section 401(d)(3) within 30 days after enactment of this bill, the Board will next consider whether such carrier should be issued new interim authority to engage in supplemental air transportation pending Board action on the certificate application. The committee is aware that the issuance of new interim authority identical to that which the carriers now hold, rather than an extension of their present certificate or exemption, may appear to be an unnecessary step. Only those who have been forced to wind their way through the Chinese maze of orders and exemptions can appreciate how directly the public interest would be served by the issuance of a new single order clearly specifying what carriers are permitted to conduct what operations pending action on their certificate applications.

The Board is directed to issue new interim authority to four categories of carriers. The first category consists of a single carrier, Vance Roberts, which was given operating authority by the Board pursuant to section 1(2) of Public Law 86-661. Since the Board has just acted on this application within the last few months, the bill requires the automatic issuance by the Board of new interim operating authority without any further showing by the carrier.

The remaining three categories of carriers holding some form of operating authority from the Board must satisfy certain specific requirements before the Board is required

to issue new interim operating authority to them. These requirements have been included in section 7 by the committee to insure that the effect of the grandfather provisions is to avoid hardship by permitting legally operating carriers to continue to operate, and not to revive dormant carriers which have not operated. A carrier which is not now operating will have the same right as a new applicant to apply for and receive a certificate as a supplemental air carrier. Justice does not require that such a carrier be permitted to begin operations prior to the time that the Board has passed on its application for a certificate.

A carrier in one of these three categories must be able to show that between January 1, 1960, and May 25, 1961 (the date of introduction of the bill), it performed any portion of the service authorized by its certificate or other operating authority or operations for the Military Establishment; that such certificate or operating authority has not been revoked or otherwise terminated by the Board; and that the certificate or operating authority is held by the original grantee or has been transferred with the Board's approval. Special provision is made for an application for transfer which may be pending at the time of enactment of the bill. The following, then, are the three categories of carriers which may be entitled to receive new operating authority under section 7. The categories are mutually exclusive. A carrier is in one category, and one only, or in none.

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to order E-13436, of January 28, 1959. Special circumstances relating to such carriers

are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

—19—

CARRIERS	COMMENT
American Flyers Airline Corp.	
Arctic-Pacific, Inc.	Certificate expired May 30, 1961; no application for renewal was filed. Authority terminated by Board Order E-16734 of April 28, 1961.
Associated Air Transport, Inc.	
Aviation Corp. of Seattle, d/b/a Westair Transport	Application for transfer and renewal of certificate pending.
Blatz Airlines, Inc.	
Capitol Airways, Inc.	
Coastal Air Lines (formerly Coastal Cargo Co., Inc.)	
Conner Air Lines, Inc.	No transport operations performed in supplemental air service during test period.
General Airways, Inc.	Certificate sold by trustee in bankruptcy but no application for transfer to the purchaser has been filed.
Imperial Airlines, Inc. (formerly Regina Cargo Airlines, Inc.)	

CARRIERS	COMMENT
Johnson Flying Services, Inc.	
Paul Mantz Air Services	
Modern Air Transport, Inc.	
Overseas National Airways	
President Airlines, Inc. (formerly California Eastern Aviation, Inc.)	
Saturn Airways, Inc. (formerly All-American Airways, Inc.)	
Sourdough Air Transport	
Southern Air Transport, Inc.	
Standard Airways, Inc.	
Stewart Air Service	
Transocean Air Lines	
United States Overseas Airlines, Inc.	
World Airways, Inc.	

The following carriers were authorized to furnish service between places within the United States by a certificate issued by the Board pursuant to Order E-14196, of July 8, 1959. The committee is aware of no circumstance which would prevent their receiving interim operating authority.

Trans International Airlines, Inc. (formerly Los Angeles Air Service, Inc.)	
Quaker City Airways, Inc.	

Senate Report No. 688

The following carriers were given interim authority to operate in interstate air transportation as a supplemental air carrier under Board Order E-9744, of November 15, 1955, and have pending before the Board applications for a certificate as a supplemental air carrier which was filed prior to July 14, 1960. Special circumstances relating to such carriers are noted. In the absence of such notation, the committee is aware of no circumstance which would prevent their receiving interim operating authority.

—20—

CARRIERS	COMMENT
Air Cargo Express, Inc.[1]	No transport operations performed in supplemental air service during test period.
Airline Transport Carriers, Inc., d/b/a California Hawaiian Airlines.	
Argonaut Airways Corp.....	
Meteor Air Transport, Inc.	Operating authority terminated by Order E-15183 of May 4, 1960.
Miami Airline, Inc.....	
S.S.W., Inc.....	Operating authority terminated by Order E-15252 of May 20, 1960.
World Wide Airlines, Inc.....	

[1] The certificate application of Air Cargo Express, Inc., was denied in Order E-13436, but the Board action reversed and the application remanded for further proceeding by the Court of Appeals for the District of Columbia in the case of *Great Lakes Airlines et al.* v. *C.A.B.*, decided Feb. 24, 1961.

There remains one additional category of carriers for which the bill makes special provision. Four carriers were given exemption authority for supplemental air service by Order E-9744, but have no applications for certificates pending before the Board because their operating authority under the exemption order was specifically terminated by the Board in Order E-13436. These carriers appealed the Board's order denying a certificate and revoking their exemption authority to the courts and are now operating under a judicial stay pending review. Certiorari has been denied by the Supreme Court, but a petition for reconsideration of this action is pending. Carriers in this category are Central Air Transport, Inc., Curry Air Transport, Ltd., Great Lakes Airlines, Inc., and Trans-Alaskan Airlines. Section 8 provides that these carriers are authorized to continue to operate subject to all conditions contained in Order E-9744 or imposed by the court until the court shall lift its stay or until final disposition of the judicial proceeding.

NEED FOR LEGISLATION

The Civil Aeronautics Board, after many years of deliberate consideration determined that the public interest required the unique and flexible services of supplemental air carriers (Order E-9744, November 15, 1955), and that certain carriers found fit to perform these services should be granted temporary certificates of public convenience and necessity (Order E-13436, January 28, 1959; E-14196, July 8, 1959). Although the court found certain provisions of the statute prevented the grant of the type of operating rights which the Board attempted to give to these carriers, it did not question the Board's judgment in determining

the issue of public need for their services. The court, in *United Airlines* v. *Civil Aeronautics Board* (278 F. 2d 446, Apr. 7, 1960) observed:

> If the requirements of section 401(e) interpose an insuperable obstacle to the full development of supplemental air service, which they may well do, the problem is for the Congress. The Board should present it there.

The Board, quite properly, has done just as court suggested. In testimony before your committee, both last year and this year the Board has reaffirmed its confidence in the soundness of the 1955 decision, and has strongly urged enactment of legislation to provide for the continued exist-

ence of the supplemental air carrier industry. Your committee shares the Board's view as to this need.

The supplemental carriers constitute an important element in national defense. During the Berlin airlift, while representing only 5 percent of the Nation's civilian air transport, these carriers moved approximately 25 percent of the passengers and 57 percent of the cargo carried by civilian aircraft supporting this strategic operation. They contributed materially during the Korean war, and were the first to airlift Hungarian refugees out of Vienna in 1956. They have supplied a substantial part of the airlift needs of the Arctic DEW line, and stood ready, after only a few hours of notice, with 38 four-engine aircraft to assist the military in the Lebanon crisis.

These carriers have been instrumental in expanding the horizon of air commerce. To a large extent they are responsible for the tremendous expansion in the charter field

which has taken place in the last few years. They pioneered the military contract business and the airfreight or all-cargo field. They were the first to develop aircoach travel and as a result opened a vast new field of air transportation by encouraging people to travel by air who had never done so previously.

Since its origin, the supplemental air carrier industry has existed in an atmosphere of uncertainty from one month to the next as to whether operating authority would continue. It has been an era of continued court challenges, protracted, costly, and tedious Government deliberations, anxiety and frustration. Your committee is unanimous in its conviction that the supplemental air carriers have a vital role to play in meeting the air transportation needs of this country. After considerable study your committee prepared an amendment in the nature of substitute to S. 1969, which it is convinced without exception, meets every reasonable objection to the original bill. The bill, as amended, will provide firm assurances as to operating authority with the resultant stability essential to the health of any industry, while at the same time incorporating adequate safeguards to protect the regularly certificated route carriers from unreasonable competition and traffic diversion.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; and existing law in which no change is proposed is shown in roman):

Senate Report No. 688

THE FEDERAL AVIATION ACT OF 1958

(72 Stat. 731)

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. As used in this Act, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Federal Aviation Agency.

(2) "Aeronautics" means the science and art of flight.

(3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided,* That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest.

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Administrator may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(12) "Board" means the Civil Aeronautics Board.

(13) "Charter service" means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour.

[(13)] *(14)* "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the

board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

[(14)] *(15)* "Civil aircraft" means any aircraft other than a public aircraft.

[(15)] *(16)* "Civil aircraft of the United States" means any aircraft registered as provided in this Act.

[(16)] *(17)* "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

[(17)] *(18)* "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

[(18)] *(19)* "Federal airway" means a portion of the navigable airspace of the United States designated by the Administrator as a Federal airway.

[(19)] *(20)* "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

[(20)] *(21)* "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

[(21)] *(22)* "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce, between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof; whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

[(22)] *(23)* "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

[(23)] *(24)* "Mail" means United States mail and foreign-transit mail.

[(24)] *(25)* "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this Act, and shall include airspace needed to insure safety in take-off and landing of aircraft.

[(25)] *(26)* "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

[(26)] *(27)* "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this Act.

[(27)] *(28)* "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

[(28)] *(29)* "Propeller" includes all parts, appurtenances, and accessories thereof.

[(29)] *(30)* "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or

manifestly incompatible with the intent thereof, references

in this Act to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

[(30)] *(31)* "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

[(31)] *(32)* "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(33) *"Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.*

(34) *"Supplemental air transportation" means charter service and other air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act.*

[(32)] *(35)* "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide

employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

[(33)] *(36)* "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

* * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Certificate Required

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

Application for Certificate

(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

Notice of Application

(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a

notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for a public hearing, and the Board shall dispose of such application as speedily as possible.

Issuance of Certificate

(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3)(i) In the case of an application for a certificate to engage in air transportation as a supplemental air carrier, the Board may issue a certificate, to any applicant not holding a certificate under paragraphs (1) or (2) of this sub-

section, authorizing the whole or any part of the transportation covered by the application, and for such period, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. In determining whether an applicant for such a certificate is fit, willing, and able within the meaning of this paragraph the Board shall give consideration to the conditions peculiar to the type of supplemental air transportation for which authority is sought, including the nature of the public need therefor and the extent to which the applicant will be required to provide such air transportation.

(ii) Any certificate issued pursuant to this paragraph authorizing individually ticketed or waybilled service shall contain such limitations, including the term thereof, as the Board finds are required to insure that such service will not result in significant diversion of traffic from any air carrier authorized to render service between the same points by a certificate or certificates of public convenience and necessity issued pursuant to paragraphs (1) and (2) of this subsection.

Terms and Conditions of Certificate

[(e) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted

by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require. A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States. No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require. No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate. Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board.]

(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted

by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

(3) A certificate issued under this section to engage in supplemental air transportation shall, with respect to charter service, designate the terminal and intermediate points only insofar as the Board shall deem practicable and may designate only the geographical area or areas within or between which service may be rendered.

(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3)(ii) of this section.

(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing

or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

(6) Any air carrier, other than a supplemental air carrier, may perform charter service or any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board.

—28—

Effective Date and Duration of Certificate

(f) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Board shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Board shall certify that operations thereunder have ceased: *Provided,* That if any service authorized by a certificate is not inaugurated within such period, not less than ninety days, after the date of the authorization as shall be fixed by the Board, or if, for a period of ninety days or such other period as may be designated by the Board any such service is not operated, the Board may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

Senate Report No. 688

Authority to Modify, Suspend, or Revoke

(g) The Board upon petition or complaint or upon its own initiative, after notice and hearings, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided,* That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of the certificate.

Transfer of Certificate

(h) No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

Certain Rights Not Conferred by Certificate

(i) No certificate shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal airway, landing area, or air-navigation facility.

Senate Report No. 688

Application for Abandonment

(j) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment to be in the public interest. Any interested person may file with the Board a protest or memorandum of opposition to or in support of any such abandonment. The Board may, by regulations or otherwise, authorize such temporary suspension of service as may be in the public interest.

Compliance With Labor Legislation

(k)(1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including takeoff and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and holds a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

Requirement as to Carriage of Mail

(l) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

Application for New Mail Service

(m) Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service

require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Board and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for at least twenty days in the office of the secretary of the Board. The Board shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such addi-

tional service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

SEC. 402. • • •

SEC. 403. • • •

SEC. 404. • • •

SEC. 405. • • •

RATES FOR TRANSPORTATION OF MAIL

Authority to Fix Rates

SEC. 406. (a) The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the

services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same.

Ratemaking Elements

(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, (1) the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; (2) such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and (3) the need of each such air carrier *other than a supplemental air carrier* for compensation for the transportation of mail sufficient to insure the

performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.

* * * * * *

—31—

SPECIAL OPERATING AUTHORIZATIONS

Authority of Board to issue

SEC. *417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—*

(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

(2) that there is a temporary requirement for air transportation between two points one or both of which is not regularly served by any air carrier; and

(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental carrier a special operating authorization to engage in air transportation between such points.

Senate Report No. 688

Terms of Authorization

(b) A special operating authorization issued hereunder shall—

(1) contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which would otherwise exist, without significant diversion of traffic from the holders of certificates for the route;

(2) be valid for not more than thirty days and extended not more than twice; and

(3) not be deemed a license within the meaning of the Administrative Procedure Act (5 U.S.C. 1001, et seq., as amended).

Procedure

(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved.

Senate Report No. 688

TITLE IX—PENALTIES

CIVIL PENALTIES

[Safety and Postal Offenses

[SEC. 901. (a)(1) Any person who violates (A) any provision of titles III, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation: *Provided*, That this subsection shall not apply to members of the Armed Forces

of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

[(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of title VII, or any rule, regulation, or order issued thereunder, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.]

Senate Report No. 688

Safety, Economic, and Postal Offenses

SEC. *901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In the case of a violation of a provision of title IV or VII or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, if such violation is a continuing one, each day of such violation shall constitute a separate offense: Provided, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.*

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of title III, V, VI, or XII, or any rule, regulation, or order issued thereunder, and by the Board in the case of violations of titles IV and VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limita-

tion of any permit or certificate issued under title IV, or the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

Liens

(b) In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: *Provided,* That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General.

AGENCY COMMENTS

The following communications were received by Government agencies and considered by the committee:

CIVIL AERONAUTICS BOARD,
Washington, D.C., June 5, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of May 26, 1961, asking for a report on S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes. S. 1969 was drafted by the Board and introduced at its request as a part of the Board's current legislative program.

Senate Report No. 688

The purpose and need for the legislation are set forth in the enclosed statement which the Board prepared to accompany the draft legislation. The Board is prepared to appear and present testimony in further justification for the enactment of the proposed legislation, and urges that the bill be set down for hearing at an early date. The Board wholeheartedly endorses S. 1969 and recommends its enactment.

Sincerely yours,

ALAN S. BOYD, *Chairman.*

STATEMENT OF PURPOSE AND NEED FOR PROPOSED LEGISLATION

A bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes

The Board, on January 28, 1959, in the *Large Irregular Air Carrier Investigation,* docket 5132, issued temporary certificates of public convenience and necessity for supplemental air service to a number of air carriers found by the Board to be fit to receive them. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services. This authorization was limited to interstate air transportation. It was the latest step in the development of this industry which was originally known as large irregular air carriers.

Senate Report No. 688

A number of air carriers certificated to render route-type service petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the Board's order and opinion of January 28, 1959. On April 7, 1960, the court rendered its decision in *United Air Lines et al.* v. *Civil Aeronautics Board* (278 F. 2d 446), in which it found that the Board's action in certificating supplemental air carrier operations was legally deficient in three respects:

—34—

1. The certificates issued by the Board do not specify the terminal and intermediate points between which air transportation is authorized but grant a blanket authorization to operate between any two points in the United States.

2. The certificates issued by the Board contain a limitation of 10 flights per month in the same direction between the same two points. In the opinion of the court, this limitation was in violation of section 401(e) of the act which provides: "No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules. • • •"

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out (one judge dissenting) that the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly author-

ized operations. It would thus appear that the court's standard of fitness that each carrier must establish would be greater than that found by the Board to be necessary for supplemental service.

As a stopgap measure to avoid immediate cessation of the supplemental air carrier industry, the Congress enacted Public Law 86-661, approved July 14, 1960. Under this legislation the Board is given temporary authority to permit supplemental air carriers to conduct operations for 20 months. However, legislation of a more permanent nature is needed if there is to be any assurance that the supplemental air carrier industry is to continue in existence.

The Board has found that the supplemental air carriers have performed a useful public service and have a definite place and role in meeting this Nation's air transportation needs. There can be no doubt that the continued existence of the irregular air carrier fleet is of real value in terms of national defense, and it is evident that the future ability of the irregular air carriers to serve the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military.

The Board recommends changes in the law as follows:

1. The law should be made clear that a carrier may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers, and the Board should be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized.

2. The Board should be authorized to grant a blanket authorization without having to designate specific points.

3. The present stringent requirement of fitness should be reduced so that only general findings of fitness need be made for supplemental service.

4. Statutory operating rights should be granted to the existing holders of supplemental air carrier certificates in the nature of a "grandfather" provision, thus assuring the continuity of operations presently being conducted by the supplemental air carriers.

The draft bill attached has been prepared to carry out these recommendations.

—35—

THE SECRETARY OF COMMERCE,
Washington, D.C., June 29, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 26, 1961, requesting the views of the Department on S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes. S. 1969 would amend the Federal Aviation Act so as to provide: for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under sections 401 (d) (1) and (2) of the act, the new class to be known as "supplemental air carriers"; that such carriers may request, and be authorized to perform, limited services sup-

plemental to those furnished by the regular air carriers; that the Civil Aeronautics Board be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized; that the Board be authorized to grant blanket authorizations without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. S. 1969 would also provide for grant of statutory operating rights to the existing holders of supplemental air carrier certificates, in the nature of "grandfather" rights.

On January 28, 1959, in the *Large Irregular Air Carrier Investigation,* CAB docket 5132, the Board issued temporary certificates of public convenience and necessity for supplemental air carrier operation in interstate air transportation. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services.

The issuance of such certificates was challenged in the courts by regularly authorized air carriers, i.e., air carriers certificated to render route-type service. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit set aside the Board action of January 28, 1959, *United Air Lines, et al.* v. *Civil Aeronautics Board* (278 F.

2d 446). The court found that the certificates issued for supplemental air service did not specify the terminal and intermediate points between which air transportation had been authorized, contained limitation as to the number of flights contrary to section 401(e) of the act, and were not based on standards of fitness for applicants for certificate required by section 401(d) of the act.

As a stopgap measure to avoid immediate cessation of 25 supplemental air carrier authorizations, the Congress enacted Public Law 86-661, approved July 14, 1960. Such legislation was designed to maintain the status quo of the supplemental air carriers for up to 20 months after enactment so as to permit further consideration to be given the entire matter of supplemental air transportation without interim cessation of the then-existing authority of the carriers involved.

—36—

This Department is of the opinion that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense. At the present time eight supplemental air carriers have executed Civil Reserve Air Fleet (CRAF) standby contracts which provide for the furnishing of air transportation on an international scale to the Department of Defense in the event of war or national emergency.

Of a total of 212 aircraft allocated by the Department's Defense Air Transportation Administration to the basic CRAF program, 40 have been allocated from supplemental air carrier inventories. In addition, the aircraft remaining in such air carrier inventories after CRAF requirements have been met (approximately 123 in number) are subject to DATA's allocation authority for purposes of DOD do-

mestic wartime requirements, such as the Navy's "quick-trans" and the Air Force's "logair" operations, and for the needs of civil economy under the War Air Service pattern program.

The Department also concludes that it would be unrealistic, as well as inherently unsound, for the continued existence of the supplemental air carriers to be entirely dependent in peacetime upon military business. Therefore, we agree that supplemental airlines should be eligible to operate their planes in peacetime in commercial air services.

Accordingly, the Department supports the proposed legislation.

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, July 29, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 1969, 87th Congress, a

bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carrier, and for other purposes. The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of the proposed legislation is to amend the Federal Aviation Act of 1958 to provide for a class of supplemental air carriers, and for other purposes.

This proposed legislation has been brought about by virtue of a decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *United Air Lines, et al.* v. *Civil Aeronautics Board* (278 F. 2d 446 (1960)). (See 364 U.S. 297, where petition for certiorari was granted.) In that case the court found that the Civil Aeronautics Board's prior actions in certificating supplemental air carrier operations were legally deficient in three

separate areas. The effect of the court's holding was that the Board did not possess the legal power to grant certificates of public convenience and necessity to authorize supplemental air transportation. Thus, those carriers who held certificates to engage in supplemental air transportation did not then have legal operating authority. As a stopgap measure Congress enacted Public Law 86-661, approved July 14, 1960, which measure was designed to preserve the supplemental air carrier industry for a period of 20 months, and until the matter could be studied more fully. The proposed legislation is designed to be of a permanent nature and, in effect, to replace the temporary stopgap legislation which allows the supplemental air carrier industry to operate for only 20 months from July 1960. In effect, the Board has found that supplemental air car-

riers have performed a useful public service and that they have a definite place and role in meeting the Nation's air transportation requirements. It, therefore, has proposed the subject legislation designed to amend the Federal Aviation Act of 1958, in various respects in order that it can legally award certificates for supplemental air transportation to those carriers who would be eligible for such authority under the proposed legislation.

The amendments proposed in S. 1969 to the Federal Aviation Act of 1958 are all amendments of a technical nature designed to give the Board appropriate legal authority to issue certificates to carriers for supplemental air transportation. These proposed technical amendments include a so-called grandfather provision which would authorize the issuance of a certificate for supplemental air transportation to those carriers who were previously authorized to engage in such transportation. (See line 7 and following on p. 3 of S. 1969.)

The continued existence of the irregular air carrier fleet is of real value in terms of national defense and it is evident that the future ability of the irregular air carriers to service the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military. In this regard, the current, April 1, 1961, allocation of aircraft to the civil reserve air fleet (CRAF) program shows that there are 8 supplemental air carriers participating in this program which now includes 22 air carriers.

The Department of the Air Force, on behalf of the Department of Defense, has no objection to the enactment of

S. 1969, but defers to the views of the Civil Aeronautics Board concerning the technical details of the bill.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOSEPH S. IMIRIE,
Assistant Secretary of the Air Force.

—38—

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, June 9, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter of May 26, 1961, acknowledged on May 31, requesting the comments of the General Accounting Office concerning S. 1969, 87th Congress, 1st session, entitled "A bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes."

We have no special information or knowledge as to the need for or desirability of the proposed legislation and,

therefore, we make no recommendation with respect to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

FEDERAL AVIATION AGENCY,
Washington, D.C., July 11, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of May 26, 1961, for the views of this Agency with respect to S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

This bill, introduced at the request of the Civil Aeronautics Board, would provide permanent certification procedures for the supplemental air carrier industry. Under existing law (Public Law 86-661) the Civil Aeronautics Board has temporary authority, which will expire in March 1962, to permit supplemental air carriers to conduct operations. It is the view of the Civil Aeronautics Board that supplemental air carriers have performed a valuable service in meeting the needs of the national defense and that their future ability to serve the needs of the military depends upon their present and continued ability to operate their aircraft in commercial activities.

Senate Report No. 688

This measure is directed to operations within the particular province of the Civil Aeronautics Board, and, accordingly, this Agency defers to the views of the Civil Aeronautics Board on the subject proposal.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely,

N. E. HALABY, *Administrator.*

Conference Report, House Report No. 1950
87th Congress, 2d Session

SUPPLEMENTAL AIR CARRIERS

JUNE 28, 1962.—Ordered to be printed

Mr. HARRIS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1969]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the bill (S. 1969) entitled "An Act to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301) is amended by redesignating paragraphs (32) and (33) as (34) and (35), respectively, and by inserting immediately after paragraph (31) the following new paragraphs:

* Numbers within dashes, used on the right, are the original page numbers of the document. These are the numbers referred to in Petitioners' Brief.

House Report No. 1950

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act."

SEC. *2. Subsection (d) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(d)) is amended by adding at the end thereof the following new paragraph:*

—2—

"(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act."

SEC. *3. Subsection (e) of section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371(e)) is amended to read as follows:*

"TERMS AND CONDITIONS OF CERTIFICATE

"(e)(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

"(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

"(3) A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.

"(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the

public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section.

"(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter trips or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board."

SEC. 4. *Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) is amended by adding at the end thereof the following new subsection:*

"ADDITIONAL POWERS AND DUTIES OF BOARD WITH RESPECT TO SUPPLEMENTAL AIR CARRIERS

"(n)(1) No certificate to engage in supplemental air transportation, and no special operating authorization described in section 417 of this title, shall be issued or remain in effect unless the applicant for such certificate or the supplemental air carrier, as the case may be, complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance, in the amount prescribed by the Board, conditioned to pay, within the

amount of such insurance, amounts for which such applicant or such supplemental air carrier may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the negligent operation or maintenance of aircraft under such certificate or such special operating authorization.

"(2) In order to protect travelers and shippers by aircraft operated by supplemental air carriers, the Board may require any supplemental air carrier to file a performance bond or equivalent security arrangement, in such amount and upon such terms as the Board shall prescribe, to be conditioned upon such supplemental air carrier's making appropriate compensation to such travelers and shippers, as prescribed by the Board; for failure on the part of such carrier to perform air transportation services in accordance with agreements therefor.

"(3) If any service authorized by a certificate to engage in supplemental air transportation is not performed to the minimum extent prescribed by the Board, it may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

"(4) The requirement that each applicant for a certificate to engage in supplemental air transportation must be found to be fit, willing, and able properly to perform the transportation covered by his application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board under this Act, shall be a continuing requirement applicable to each supplemental air carrier with respect to the transportation authorized by,

and currently furnished or proposed to be furnished under, such carrier's certificate. The Board shall by order, entered after notice and hearing, modify, suspend, or revoke such certificate, in whole or in part, for failure of such carrier (A) to comply with the continuing requirement that such carrier be so fit, willing, and able, or (B) to file such reports as the Board may deem necessary to determine whether such carrier is so fit, willing, and able.

"(5) In any case in which the Board determines that the failure of a supplemental air carrier to comply with the provisions of paragraph (1), (3), or (4) of this subsection, or regulations or orders of the Board thereunder, requires, in the interest of the rights, welfare, or safety of the public, immediate suspension of such carrier's certificate, the Board shall suspend such certificate, in whole or in part, without notice or hearing, for not more than thirty days. The Board shall immediately enter upon a hearing to determine whether such certificate should be modified, suspended, or revoked and, pending the completion of such hearing, the Board may further suspend such certificate for additional periods aggregating not more than sixty days. If the Board determines that a carrier whose certificate is suspended under this paragraph comes into compliance with the provisions of paragraphs (1), (3), and (4) of this subsection, and regulations and orders of the Board thereunder, the

Board may immediately terminate the suspension of such certificate and any pending proceeding commenced under this paragraph, but nothing in this sentence shall preclude the Board from imposing on such carrier a civil penalty for any violation of such provisions, regulations, or orders.

"(6) The Board shall prescribe such regulations and issue such orders as may be necessary to carry out the provisions of this subsection."

SEC. *5. Clause (3) of section 406(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1376(b)) is amended by inserting after "each such air carrier" the words "(other than a supplemental air carrier)".*

SEC. *6. Title IV of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:*

"SPECIAL OPERATING AUTHORIZATIONS

"AUTHORITY OF BOARD TO ISSUE

"SEC. *417. (a) If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—*

"(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

"(2) that there is a temporary requirement for air transportation between two points, one or both of which is not regularly served by any air carrier; and

"(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental air carrier a special operating authorization to engage in air transportation between such points.

"TERMS OF AUTHORIZATION

"(b) A special operating authorization issued under this section—

"(1) shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route;

"(2) shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days; and

"(3) shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

"PROCEDURE

"(c) The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved."

—5—

SEC. 7. *(a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958*

for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show—

(1) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States under a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Order E-13436, adopted January 28, 1959, or Order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board Order E-9744 of November 15, 1955, and has pending before the Board an application for certification as a supplemental air carrier which was filed prior to July 14, 1960;

(2) that, during the period beginning on the date such certificate was issued or such interim operating authority was conferred by the Board and ending on the date of enactment of this Act, such applicant or his predecessor in interest lawfully performed (A) a substantial portion of the transportation authorized by such certificate or interim operating authority, (B) substantial operations in overseas or foreign air transportation, as a supplemental or large irregular air carrier, authorized by the Board, or (C) substantial operations for the Military Establishment of the United States authorized by the Board;

(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the

enactment of this Act: Provided, That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect on or before the date of enactment of this Act, notwithstanding a pending judicial review of such order; and

(4) that such certificate or interim operating authority is held by the original grantee or has been transferred to the applicant with Board approval pursuant to section 401(h) of the Federal Aviation Act of 1958: Provided, That a person who on the date of enactment of this Act had on file with the Board an application for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, may be issued a new interim certificate or new interim operating authority under this section if the Board approves the transfer pursuant to section 401(h) of the Federal Aviation Act of 1958;

the Board may issue a new interim certificate or new interim authority to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958, subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 if it determines that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

House Report No. 1950

(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act shall show

that it or its predecessor has received interim operating authority from the Civil Aeronautics Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat., 527), the Board may issue new interim authority to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958, subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 if it determines that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

(c) If an applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 for a certificate for supplemental air transportation shall show—

(1) that it, or its predecessor in interest, was a carrier authorized to furnish all-cargo service between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order numbered E-3085, adopted July 29, 1949, order numbered E-9760, adopted November 21, 1955, or order numbered E-10084, adopted March 12, 1956;

(2) that within thirty days prior to such application there has become final an order of the Civil Aeronautics Board in the domestic cargo-mail service case, docket numbered 10,067 and others, denying applicant's, or its predecessor's, application for renewal of such certificate; and

(3) that immediately prior to the effective date of such denial the applicant, or its predecessor in interest, lawfully performed either (A) any portion of the service authorized by the certificate or (B) any operations for the Military Establishment of the United States authorized by the Board;

the Board may issue a new interim certificate to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958, subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958, if it determines that the applicant is fit, willing and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

(d) A new interim certificate or new interim authority issued under this section shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)).

SEC. *8. (a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service*

between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Order E-13436, adopted January 28, 1959, or Order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the operating authority described in this subsection has not been revoked or otherwise terminated by the Board, it may perform operations as described in such certificate or such interim operating authority, subject to the terms, conditions, and limitations applicable to such certificate or such interim operating authority, or both, as the case may be, for thirty days from the date of enactment of this Act, and if it has filed application pursuant

to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, may perform such operations, subject to such terms, conditions, and limitations, for a period of ninety days from the date of enactment of this Act. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board Order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, and whose operating authority described in this subsection has not been revoked or otherwise terminated by the Board, may continue to operate in interstate air transportation as described in such operating authority, subject to the terms, conditions, and limitations applicable to such operat-

ing authority, for thirty days from the date of enactment of this Act, and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 within said thirty days, may perform such operations, subject to such terms, conditions, and limitations, for a period of ninety days from the date of enactment of this Act.

(b) The certificates of public convenience and necessity issued by the Board pursuant to Order E-13436 adopted January 28, 1959, and Order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the exemption authority issued by the Board under Order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under Order E-10161 of April 3, 1956, shall terminate thirty days from the date of enactment of this Act.

(c) From and after the thirtieth day after the date of enactment of this Act the provisions of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)) shall not be applicable to any operating authority referred to in this section, or to any application for renewal thereof.

SEC. *9. The Civil Aeronautics Board may, if it finds such authorization to be in the public interest to permit an orderly transition to an all-charter operation, authorize the holder of any certificate or other operating authority issued by the Board under this Act or under section 401(d)(3) of the Federal Aviation Act of 1958 to perform individually ticketed and individually waybilled services in air transportation during the two-year period beginning on the date of enactment of this Act, subject to such terms, conditions,*

and limitations as the Board may prescribe, except that the annual gross revenue of such holder from services authorized by this section during each year of such two-year period shall not exceed the average annual gross revenue from individually ticketed and individually waybilled services furnished by such holder, as authorized by the Board, during the period beginning January 1, 1959, and ending December 31, 1961, inclusive, as determined by the Board.

SEC. *10. The provisions of this Act shall in no way affect the authority of the Board—*

(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board Order E-13436 of January 28, 1959, or Board Order E-14196 of July 8, 1959, or against the holder of any interim operating authority conferred by the Board under paragraph (2) of the first section of

Public Law 86-661 or under Board Order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act; or

(2) to institute, on or after the date of enactment of this Act, any enforcement or compliance proceeding or action against the holder of any certificate or interim operating authority referred to in paragraph (1) of this section with respect to any violation of—

(A) the Federal Aviation Act of 1958,

(B) the provisions of such certificate,

(C) the terms of such operating authority, or

(D) the regulations of the Board,

without regard to when such violation occurred.

Any sanction which the Board lawfully could have imposed on the operating authority of the holder of any certificate or interim operating authority referred to in paragraph (1) of this section for any violation referred to in paragraph (2) of this section, which violation occurred prior to the issuance to such holder of a new interim certificate or new interim authority under section 7 of this Act or the issuance to such holder of a certificate of public convenience and necessity to engage in supplemental air transportation under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958, may be imposed on the certificate or other operating authority issued to such holder under section 7 of this Act or under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958.

SEC. *11. Any application of an air carrier heretofore consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 and others, shall be deemed to have been finally disposed of upon the date of enactment of this Act.*

SEC. *12. Section 901(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)) is amended to read as follows:*

"SAFETY, ECONOMIC, AND POSTAL OFFENSES

"SEC. *901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, or XII of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed*

$1,000 for each such violation. If such violation is a continuing one, each day of such violation shall constitute a separate offense: Provided, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

"(2) Any such civil penalty may be compromised by the Administrator in the case of violations of titles III, V, VI, or XII, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of titles IV or VII, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or by the

Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged."

SEC. 13. Section 902(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(a)) is amended to read as follows:

"GENERAL

"SEC. 902. (a) Any person who knowingly and willfully violates any provision of this Act (except titles III, V, VI,

VII, and XII), or any order, rule, or regulation issued by the Administrator or by the Board under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise provided in this section or in section 904, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense."

SEC. *14. (a) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "Sec. 401. Certificate of public convenience and necessity," is amended by adding at the end thereof the following:*

"(n). Additional powers and duties of Board with respect to supplemental air carriers."

*(b) That portion of such table of contents which appears under the heading "*TITLE IV—AIR CARRIER ECONOMIC REGULATION*" is amended by adding at the end thereof the following:*

"Sec. 417. Special operating authorizations.
"(a) Authority of Board to issue.
"(b) Terms of authorization.
"(c) Procedure."

(c) That portion of such table of contents which appears under the heading "Sec. 901. Civil penalties." is amended by striking out "(a) Safety and postal offenses." and in-

serting in lieu thereof "(a) Safety, economic, and postal offenses.".

And the Senate agree to the same.

OREN HARRIS,
JOHN BELL WILLIAMS,
HARLEY O. STAGGERS,
SAMUEL N. FREIDEL,
JOHN JARMAN,
JOHN B. BENNETT,
W. L. SPRINGER,
HAROLD R. COLLIER,
SAMUEL L. DEVINE,
Managers on the Part of the House.

WARREN G. MAGNUSON,
MIKE MONRONEY,
GEO. A. SMATHERS,
STROM THURMOND,
CLAIR ENGLE,
NORRIS COTTON,
THRUSTON MORTON,
HUGH SCOTT,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the bill (S. 1969) entitled "An Act to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes," submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text. The Senate agreed to the amendment of the House with an amendment which was a substitute for both the text of the House amendment and the Senate bill, and the House disagreed to the Senate amendment.

The committee of conference recommends that the House recede from its disagreement to the amendment of the Senate, with an amendment which is a substitute for the text of the Senate amendment, the text of the House amendment, and the text of the Senate bill.

The differences between the House amendment to the text of the Senate bill and the substitute agreed to in conference are noted below, except for clerical corrections, incidental changes made necessary by reason of agreements reached by the conferees, and minor drafting and clarifying changes.

Requirements as to insurance, performance bonds, minimum service, and fitness.—Sections 3 and 4 of the Senate amendment contained provisions not contained in the House

amendment, relating to liability insurance and performance bonds, minimum service requirements, and minimum standards of financial fitness, applicable to supplemental air carriers. These provisions of the Senate amendment are described as follows:

1. The Civil Aeronautics Board was authorized to require supplemental air carriers to carry liability insurance or furnish performance bonds, or both, in the minimum amounts and upon the minimum terms prescribed by the Board, or demonstrate arrangements equivalent thereto.

2. The Board was authorized to prescribe minimum service requirements for supplemental air carriers. If any such carrier failed to perform authorized air transportation services to the minimum extent so prescribed, the Board was authorized to suspend such carrier's certificate to the extent of such service and, after notice and hearing, the Board was further authorized to direct that such certificate cease to be effective to the extent of such service.

3. The Board was authorized to prescribe minimum standards of financial fitness for supplemental air carriers and to require such carriers to submit reports so the Board could ascertain whether such carriers were maintaining continuous compliance with such standards. If any such carrier failed to comply with such standards or to

file such reports, the Board was required to suspend such carrier's certificate and, if such carrier did not demonstrate compliance with such standards within a reasonable period of time, the Board could, after notice and hearing, revoke such carrier's certificate.

House Report No. 1950

Section 4 of the substitute agreed to in conference retains provisions relating to insurance and performance bonds, minimum service requirements, and standards of fitness, applicable to supplemental air carriers, with some changes which the committee of conference agreed would impose stricter requirements on supplemental air carriers, particularly with respect to liability insurance, and would make such provisions administratively more workable. Such section 4 of the conference substitute would add a new section 401(n) to the Federal Aviation Act of 1958 containing paragraphs numbered (1) through (6), as follows:

1. Paragraph (1) would make it mandatory for the Civil Aeronautics Board to require each supplemental air carrier, and each applicant for a supplemental certificate, to comply with Board regulations governing the filing and approval of policies of insurance (in the amount prescribed by the Board) conditioned to pay amounts for which such carrier or such applicant may become liable for personal injuries or death, or for property damage or loss, resulting from negligent operation or maintenance of aircraft operated by such carrier or such applicant under authority granted by the Board. The Senate provision permitting the Board to accept "equivalent arrangements" in lieu of policies of liability insurance is omitted from the conference substitute.

2. Paragraph (2) would authorize the Board to require any supplemental air carrier to file a performance bond or equivalent security arrangement (in the amount and upon the terms prescribed by the Board) in order to protect persons utilizing the air transportation services per-

formed by such carrier against the failure of such carrier to perform such services in accordance with agreements therefor.

3. Paragraph (3) would provide that, if any service authorized by a supplemental certificate is not performed to the minimum extent required by the Board, the Board may (after notice and hearing) direct that such certificate shall cease to be effective to the extent of such service.

4. Paragraph (4) would deal with the problem of requiring each supplemental air carrier to maintain continuous compliance with fitness standards, including but not limited to standards of financial fitness, by declaring that the requirement that each applicant for a supplemental certificate must be found by the Board to be fit, willing, and able to perform the transportation covered by his application and to conform to the provisions of the Federal Aviation Act of 1958 and requirements of the Board thereunder, shall be a continuing requirement applicable to each supplemental air carrier, taking into consideration the transportation authorized by such carrier's certificate and the transportation currently furnished or proposed to be furnished under such certificate. The Board would be required to modify, suspend, or revoke such certificate (after notice and hearing) for failure of such carrier to maintain continuous compliance with the requirement that such carrier be so fit, willing, and able, or for failure of such carrier to file reports deemed necessary by the Board to determine whether such carrier is so fit, willing, and able. This provision would

make it clear that the Board's standards of fitness applicable to each supplemental air carrier could be revised from time to time, after the supplemental certificate is initially

issued, in order to provide standards commensurate with the transportation services performed thereunder.

5. Paragraph (5) would give the Board authority to suspend the certificate of any supplemental air carrier, without notice or hearing (for not more than 30 days), for failure of such carrier to comply with requirements relating to liability insurance, performance of minimum service, or fitness, whenever the Board determines that immediate suspension of such certificate is required in the interest of the rights, welfare, or safety of the public. After exercising such suspension authority, the Board would be required to begin a hearing immediately to determine whether such certificate should be modified, suspended, or revoked. The Board could extend the period of suspension to the extent necessary to complete such hearing, but in no event could the periods of extension aggregate more than 60 days. If the Board should determine that a carrier whose certificate is suspended under this provision comes into compliance with the requirements relating to liability insurance, performance of minimum service, and fitness, the Board could immediately terminate such suspension and any pending proceeding instituted under this provision. It is clearly provided, however, that the Board could impose a civil penalty of not more than $1,000 per day for each day of any violation of those requirements which led to such suspension, notwithstanding the fact that the carrier concerned subsequently came into compliance with such requirements and the Board terminated such suspension.

6. Paragraph (6) would require the Board to prescribe such regulations and issue such orders as may be necessary to carry out the foregoing provisions.

House Report No. 1950

Cargo carriers charter authority.—Existing section 401 (e) provides that "Any air carrier may make charter trips or perform any other special service, without regard to the points named in its certificate, under regulations prescribed by the Board." All certificated route carriers derive their authority to engage in off-route charter operations by virtue of this section. However, in 1953, the Court of Appeals for the District of Columbia interpreted this provision to mean that it merely lifted the limitation with respect to the points designated in the certificate and did not affect the type of service to be rendered. The Senate amended this provision so as to provide that any air carrier other than a supplemental air carrier, may make charter trips without regard to the type of service provided in its certificate of public convenience and necessity. This amendment was designed to empower the Board to authorize air carriers certificated to carry only cargo to engage in passenger charter operations under regulations prescribed by the Board.

Section 416 of the Federal Aviation Act of 1958 provides in effect that the Board may exempt an air carrier from any of the economic provisions of title IV of the act or any regulation issued thereunder, whenever the enforcement thereof would be an undue burden on the air carrier concerned by reason of the limited extent of, or unusual circumstances affecting, the operation of the carrier, and such enforcement would not be in the public interest. The Senate committee in its report (No. 664) took strong exception to the Board's excessive use of this exemption power and stated that "the Board's practice of routinely permitting continual large-scale charter operations by exemption is not only unwise, but illegal, because not within the 'un-

usual circumstances' contemplated by section 416." The committee of conference concurs with this view. The hearing records of both Houses are replete with evidence that the Board has exceeded the proper use of the exemption authority, not only with respect to the granting of charters but in other areas as well. For example, the Board employed the exemption power as a device to circumvent the statutory provisions with respect to air carrier certification when, in 1955, it granted supplemental air carriers authority to engage in air-carrier operations on an interim exemption basis. This order quite properly was set aside by the Court of Appeals, District of Columbia Circuit, July 19, 1956, on the ground that the Board had not made sufficient subsidiary finding to sustain the statutory finding required for exemption that the requirement for certification would be an undue burden on the carriers. A petition for a writ of certiorari was denied by the Supreme Court.

The Board has also employed this exemption power to permit cargo carriers to engage in passenger charter operations. The committee of conference recognizes that these carriers have performed a service for Military Air Transport Service and others and that such authority may be a desirable supplement to their primary role of conducting cargo operations. It is not the intention of the committee of conference to preclude cargo carriers from engaging in passenger charter operations by virtue of its report language directed to section 416. The committee of conference, however, does feel that the Board's exemption power under section 416 should be construed narrowly and employed in only very limited and unusual circumstances. Use of the exemption authority to permit cargo carriers to engage in

passenger charter operations does not, in the view of the committee of conference, fall within the purview of the Board's exemption power.

If the Board is disposed to granting cargo carriers authority to engage in passenger charter operations the committee of conference is of the view that it should do so only by virtue of specific statutory authority rather than through a strained interpretation of its exemption powers. Consequently, the committee of conference agrees that section 401(e) should be amended as contemplated by the Senate amendment. In so doing, the committee of conference wishes to state that it does not intend that this amendment be interpreted as a directive that the Board should necessarily grant the cargo carriers either any greater or lesser authority than the Board has, in practice, given them under section 416. The scope of such authority is a matter for the Board to determine. The intention is only to insist that the Board act under specific statutory authority and not under a strained interpretation of a provision not contemplated by Congress. This amendment will permit the Board to authorize cargo carriers to engage in passenger charter operations to the extent that it may find, from time to time, that the public interest so requires. Since any charter operations conducted under section 401(e) can be done only under regulations prescribed by the Board, the Board will have the necessary flexibility to limit frequency of service and to impose such other limitations, conditions, and restrictions as the public interest may require.

—14—

Individually ticketed and waybilled services.—Under the House amendment, the term "supplemental air transportation" did not include individually ticketed and waybilled

services, therefore supplemental air carriers could not have engaged in such services on a permanent basis. Under the Senate amendment, such term did include individually ticketed and waybilled services and therefore such carriers could have engaged in such services on a permanent basis.

The substitute agreed to in conference adopts the provisions of the House amendment with respect to the prohibition of individually ticketed and waybilled services on a permanent basis. However, in order to permit an orderly transition to all-charter operations, section 9 of the conference substitute authorizes the Civil Aeronautics Board to permit any supplemental air carrier holding interim operating authority issued by the Board under this legislation or permanent operating authority issued by the Board under the proposed section 401(d)(3) of the Federal Aviation Act of 1958 to perform individually ticketed and waybilled services temporarily during the 2-year period beginning on the date of enactment of this legislation and subject to such terms, conditions, and limitations as the Board may prescribe. Such section 9 also contains a specific limitation that the annual gross revenue of such carrier from such services shall not exceed the average annual gross revenue from such services furnished by such carrier during the calendar years 1959, 1960, and 1961. At the end of such 2-year period supplemental air transportation would be limited to all-charter operations, except for limited individually ticketed service which may be authorized by the Board on a temporary basis.

Transportation of mail.—The House amendment prohibited a supplemental air carrier from transporting mail except pursuant to a special operating authorization issued

by the Board for a temporary period, and during this temporary period a supplemental air carrier could transport mail.

Under the Senate amendment a supplemental air carrier could carry mail at any time but in no event could that carrier be eligible for a so-called subsidy payment for transporting mail.

The proposed conference substitute adopts both the prohibition of the House amendment against transporting mail except pursuant to a special operating authorization and the prohibition of the Senate amendment that a supplemental air carrier cannot become eligible for a subsidy payment.

New interim operating authority.—Under section 5 of the House amendment, the Civil Aeronautics Board was required to issue new interim operating authority to each applicant who met the eligibility requirements for such authority. Such applicant could then continue to engage in supplemental air transportation to the same extent authorized in the certificate or other authority of such applicant previously issued by the Board, subject to the same terms, conditions, and limitations applicable to such previously issued authority, until the Board granted or denied the application of such applicant for a supplemental certificate authorized to be issued under this legislation.

Under subsections (a) and (b) of section 7 of the Senate amendment, the Board was authorized to issue this new interim operating authority to each applicant who met the eligibility requirements therefor, but only if the Board found the applicant to be fit, willing, and able to perform the transportation services authorized by such authority

and to conform to the provisions of the Federal Aviation Act of 1958 and the rules, regulations, and requirements of the Board and the Administrator of the Federal Aviation Agency. The operations performed under such authority was to be subject to such terms, conditions, and limitations as the Board prescribed.

The substitute agreed to in conference adopts the provisions of the Senate amendment regarding the issuance of new interim operating authority with one modification. The conference substitute provides, in effect, that no operations may be performed under any new interim operating authority unless such operations could be authorized by the Board in a supplemental certificate issued pursuant to the new section 401(d)(3) proposed to be added to the Federal Aviation Act of 1958 by section 2 of the conference substitute. The effect of this modification is to limit operations under any new interim operating authority to supplemental air transportation, as defined by this legislation, which includes only charter operations, except to the extent the Civil Aeronautics Board is authorized by this legislation to permit limited individually ticketed operations on a temporary basis.

Subsection (c) of section 7 of the Senate amendment contained a provision not contained in the House amendment under which the Civil Aeronautics Board was authorized to grant new interim operating authority to an applicant who was previously certificated by the Board to furnish all-cargo service between points within the United States, if such carrier applied for such authority within 30 days after the application for renewal of its cargo certificate was denied by the Board. The committee of conference is

informed that this provision describes an air carrier which was originally certificated as a supplemental air carrier and subsequently certificated as a cargo carrier. Under Board regulations such carrier could not hold two types of certificates; therefore, the supplemental certificate initially issued was canceled. This provision of the Senate amendment would permit such carrier to apply to the Board, within 30 days after the application for renewal of its cargo certificate is denied, for new interim operating authority to conduct supplemental operations pending the issuance or denial of a supplemental certificate pursuant to the proposed new section 401(d)(3) of the Federal Aviation Act of 1958.

This provision of the Senate amendment is retained in the conference substitute.

Statutory operating authority.—Section 6 of the House amendment provided that any air carrier holding certain operating authority previously issued by the Civil Aeronautics Board to engage in supplemental air transportation could continue operations under such previously issued authority for a period of 30 days after the date of enactment of the proposed legislation and, if such carrier applied for a supplemental certificate under the proposed new section 401(d)(3) of the Federal Aviation Act of 1958 within such 30-day period, it could further continue such operations until the Board granted or denied such carrier's application for new interim operating authority.

Section 8 of the Senate amendment contained provisions similar to section 6 of the House amendment, except that any such carrier which applied for a supplemental certificate within 30 days after the date of enactment of the

proposed legislation could continue its operations (as described in the operating authority previously issued by the Board) for a period of only 90 days after such date of

enactment. The operating authority previously issued by the Board would be terminated 30 days after such date of enactment. If the Board did not grant such carrier's application for new interim operating authority, or for a supplemental certificate, within 90 days after such date of enactment, such carrier could no longer engage in supplemental air transportation.

The substitute agreed to in conference adopts the provisions of the Senate amendment with respect to statutory operating authority, with the addition of language to make it clear that any carrier continuing operations under this provision would be required to perform such operations subject to the same terms, conditions, and limitations applicable to the operating authority of such carrier previously issued by the Board.

Subsection (c) of section 8 of the Senate amendment provided that, 30 days after the date of enactment of the proposed legislation, section 9(b) of the Administrative Procedure Act would not be applicable to any operating authority referred to in such section 8, so as to preclude any carrier from continuing operations pending Board action on an application for renewal of such operating authority. No corresponding provision was contained in the House amendment.

The substitute agreed to in conference adopts this provision of the Senate amendment.

Subsection (c) of section 6 of the House amendment contained a provision, not contained in the Senate amend-

ment, which provided that any air carrier whose operating authority was continuing solely by virtue of a judicial stay of a Board Order terminating such operating authority could continue its operations until the judicial stay of such Board Order was lifted or the judicial review of such Board Order was completed, whichever first occurred. This provision is no longer necessary because the judicial review proceeding referred to has been completed since the House amendment was adopted on September 18, 1961, and the Board Order referred to has terminated such operating authority so that the carriers concerned are no longer operating thereunder.

This provision is omitted from the conference substitute.

Civil penalties.—Section 9 of the House amendment amended section 901(a) of the Federal Aviation Act of 1958 so as to enable the Civil Aeronautics Board to impose a civil penalty of not more than $1,000 for each violation of the economic provisions of such act and of the regulations and orders of the Board issued thereunder. Also included in the House amendment was a provision (similar to the provision applicable in the case of criminal penalties) that, if any economic violation was a continuing one, each day of such violation would constitute a separate offense. This section of the House amendment was not limited to violations committed by supplemental air carriers, but included violations by certificated route air carriers or any other person.

Section 11 of the Senate amendment contained provisions identical to those of the House amendment, with an important modification which broadened the provision of the House amendment relating to continuing offenses so as to include not only violations of the economic provisions of

the Federal Aviation Act of 1958 administered by the Civil Aeronautics Board, but also violations of the safety provisions of such act administered by the Federal Aviation Agency.

—17—

The substitute agreed to in conference adopts the provisions of section 11 of the Senate amendment.

Criminal penalties.—Section 10 of the House amendment amended section 902(a) of the Federal Aviation Act of 1958 so as to preserve the criminal penalties contained in such section for knowing and willful violations of the economic provisions of such act.

Section 12 of the Senate amendment contained provisions identical to those of the House amendment, except that language was added by the Senate amendment to make it clear that criminal penalties would not be applicable to violations of regulations issued by the Postmaster General in connection with the transportation of mail, or to violations of laws relating to foreign commerce for which criminal penalties are otherwise provided in section 904 of the Federal Aviation Act of 1958.

The substitute agreed to in conference adopts the provisions of section 12 of the Senate amendment.

OREN HARRIS,
JOHN BELL WILLIAMS,
HARLEY O. STAGGERS,
SAMUEL N. FRIEDEL,
JOHN JARMAN,
JOHN B. BENNETT,
W. L. SPRINGER,
HAROLD R. COLLIER,
SAMUEL L. DEVINE,
Managers on the Part of the House.

Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce on Limited Air Carrier Certificates, House of Representatives, 87th Congress, 1st Session

STATEMENT OF CHAIRMAN BOYD

p. 10

* * * * *

"The Board therefore, on April 28, 1960, submitted to this Committee proposed legislation to correct the deficiencies in the Board's legal authority which were found to exist by the court."

p. 13:

"MR. BOYD. * * *

"The Board has found that the supplemental air carriers have performed a useful public service and have a definite place and role in meeting this Nation's air transportation needs. There can be no doubt that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense, and it is evident that the future ability of the supplemental air carriers to serve the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military. In order to assure the continuance of the supplemental air carrier industry, the Board recommends the enactment of H.R. 7318."

p. 29:

"MR. BOYD. * * *

"We still do not know exactly where these supplementals should fit.

"We feel very strongly that the supplemental carriers have a definite place and I think we have put on record our support of supplemental carriers, but we are seeking $50,000 to study the role of the supplemental carrier.

"We feel that 7318 here would give us the flexibility to deal with this problem once we find out exactly where we should go and one of the things we have to figure out is to what extent can we go in the international charter field without doing injury to our certificated route carriers."

p. 74:

STATEMENT OF CLAYTON L. BURWELL

* * * * *

"The prime reason these carriers have been forced to spend more than 9 years before the Board in a proceeding for certification and have been forced to take up the Congress time is the concern that if they are granted any authority, it will result in widescale diversion of revenues from the route carriers who also have their troubles. I believe it will surprise you to learn that the maximum domestic trunkline revenues even exposed to diversion by supplementals is less than three-fourths of 1 percent,[5] and that this is basically the magnitude of the problem.

"The 12 domestic trunklines derived only one-half of 1 percent of their total transport revenues from charter operations in 1959 and 1960.[6]

"The total transport revenues of these 12 carriers from domestic operations in 1960 was slightly less

than $2 billion and their charter revenues $10,414,000 or approximately one-half of 1 percent. From the table (exhibit No. 4) you can see that approximately the same percentage obtained in 1959.

"'This, therefore, is the maximum area of competition in the field of domestic charter—even if we diverted it all. It is difficult to believe that a $2 billion a year industry of 12 carriers can be hurt by this one-half of 1 percent exposure or that the myth of competition in the airline industry can survive on no exposure at all.'"

---

p. 91:

EXHIBIT No. 8

CIVIL AERONAUTICS BOARD, ECONOMIC REGULATIONS,
EFFECTIVE APRIL 28, 1961

[Reg. ER-326]

PART 295—TRANSATLANTIC CHARTER TRIPS

Revision of Part

* * * * *

Historically, a major objective of the Board has been the development of the potentially large mass international travel market in the United States without undue diversion from the regularly-scheduled, individually-ticketed services of United States and foreign flag route operators. In furtherance of this objective, the Board has granted individual authorizations for transatlantic charter flights to carriers not otherwise thereunto authorized, but has also imposed and from time to time has redefined standards for

charter eligibility of groups. Thus, in 1957, we amplified the general criteria for charter eligibility which we had followed in 1955 and 1956. These criteria were largely those that had been previously developed by the carriers and the Board, and had been embodied in IATA Resolution 045, which contains the requirements established by scheduled international route operators for their own operations. In 1958, we made these criteria more specific and susceptible of precise application. And in 1959, we embodied them with minor modifications in an Economic Regulation (Part 295), given them greater stability and legal effect than theretofore. In 1959, we also concluded the Foreign Off-Route Charter Investigation, Docket 7173, in which foreign air carriers were for the first time authorized to perform off-route charters in air transportation. In addition to amending their permits to provide this authority, we promulgated a new Economic Regulation (Part 212) and established as guides for issuance of a charter authorization standards similar to those in Part 295. In 1960, after the IATA carriers had finally undertaken, upon the Board's suggestion, to provide more definitive and enforceable standards for their own operations, we undertook to modify Parts 295 and 212 in order to conform our requirements in substantial respects to those now provided in amended IATA Resolution 045.[1] Consequently, at such time charter requirements for all classes of transatlantic carriers had become substantially similar.

p. 156:

"MR. PATTERSON. • • •

• • • • •

"On the charter business, particularly overseas, our big complaint is with the Civil Aeronautics Board and the restrictions they place upon us. A group of people, a group of Americans or a group of Polish-Americans, or Israel-Americans, should be able to go out and charter an airplane to go to their homelands for a month or 2 weeks vacation in the summertime. Our Government is spending millions of dollars around the world trying to obtain friends. What could be more helpful than taking a bunch of Polish-Americans or Israel-Americans to their homeland to spread the word for a month. But you can't do this. There is too much redtape. There is a carrier sitting here in the room that took a bunch of people last year to a foreign country, and in the postflight report that the Board makes you file there was one passenger missing coming back. This was a terrible thing. Well, the poor man had such a good time in his homeland he died. He had a heart attack and died, but the Board criticized it because they didn't know what happened to him. They thought it was a phony deal. This is how bad it really is. If the Congress would help us get the Board regulations relaxed to the point where we could carry more people over there and not only over there—our company had a group of 47 ministers turned down last week from Brussels coming over here. We had an empty airplane ferrying back from a group we had taken to Paris. We tried to get an exception to carry back 47 ministers that could only afford to come back with us. They couldn't afford a scheduled airline fare or the foreign carrier fare. We were turned down

because we could not adjust our tariff to meet this demand. If it had been a full airplane load of ministers, it would have been all right. But 47 did not fit the tariff and we could not carry these people back. Consequently, they are not coming over here.

"On the charter deal, we had a group at New York University about 2 weeks ago. A little 17-year-old campus girl was organizing this group. The Civil Aeronautics Board continually hammered away at us for days and days and days, and at the dean of the university, to try to get the group bona fide. In the meanwhile, another boy on the campus organized a 2-D Club, he called it, got people off the streets from two other universities that we know about, and it was approved on KLM with no problem at all. Our group was finally approved and did go, but it was an awful battle. The foreign carriers are siphoning off an awful lot of the North Atlantic business. The testimony this morning brought out an interesting point. I believe they should be entitled to some of the business. I don't want to discriminate against them. But I think that the Board should be equally as rigid on the foreign carriers as they are on us.

"That is all I have to say, sir."

pp. 218-219:

ALL-CHARTER AUTHORITY AFFORDS A SUITABLE AND PRACTICAL BASIS FOR SUPPLEMENTAL CARRIER OPERATIONS

Certificates solely for charter operations would be consistent with the regulatory approach of the act, and would

rest on sound principles. Such certificates would embody regulation based on what service is to be provided, where, and by whom, instead of trying to permit certain carriers to engage in a little scheduled air transportation, but not very much. And it is clear that contract and charter services have provided a fertile and growing field for the certificated supplemental carriers—a field which, indeed, constitutes the bulk of their operations.

The latest revenue data for the supplementals, published by the Board, are for the year ended June 30, 1960. These data are based on the supplementals' official financial reports to the Board. Comparison of the fiscal 1960 data with those for prior fiscal years shows that, since the Board by its 1955 decision enlarged the scope of supplemental charter operations, the supplementals have expanded rapidly in the charter field. The rate of increase, for the 25 certificated supplementals, is indicated in the table below:

Year ended June 30—	Contract and charter revenues	Percent increase	
		Over prior year	Over fiscal 1956
	(Thousands)		
1956	$21,910	—	—
1957	24,036	9.7	9.7
1958	27,788	15.6	26.8
1959	39,696	42.9	81.2
1960	47,111	18.7	115.0

During this same 5-year period, while the charter and contract revenues of the 25 certificated supplementals more than doubled, the operating revenues of the domestic trunklines increased by only about 12 percent per year. It is thus abundantly clear that the charter field which the Board opened to the supplementals in 1955 gave them a very real opportunity for business growth.

These same revenue data, as reported by the supplementals and published by the Board, also reveal that charter and contract services have generated the bulk of the revenues of most of the 25 certificated supplementals. Individually ticketed passengers and individually waybilled freight services are of lesser importance. Thus, for the 2-year period ended June 30, 1960, Transocean and U.S. Overseas—only two of the certificated supplementals—accounted for almost 85 percent of the individually sold revenues of the entire group of 25 carriers. For the remaining 23 carriers, charter and contract accounted for 94 percent of total transport revenues, and individually sold services accounted for only 6 percent.

The eagerness with which some supplemental carrier spokesmen seek access to noncharter markets should not be permitted to obscure the facts as to their growth and success in charter markets.

It should be noted that the Board's two hearing examiners, in their initial decision which led to the Board's 1955 decision, originally found that the authority granted these carriers should be basically only to conduct charter operations, and should not include authority to conduct individually ticketed services of a route-type nature. Two mem-

bers of the Board advocated the all-charter approach, but were outvoted by the three members who felt that a limited individually ticketed authority should also be granted. Thus, of the seven men who devoted their talents and expertness to deciding the scope of the authorization, four rejected the notion that the 10-flight grant for individually ticketed flights would serve the public interest and accord with the sound regulatory concepts of the act, while only three favored a limitation-of-schedules approach.

Available data—such as those cited above—would seem to indicate that the four were right, and the three were wrong. This is particularly so since the three based their decision on the notion that the "health and prosperity" of the certificated carriers "permitted" expansion of supplemental carrier operations. Whatever may have seemed to be the "health and prosperity" of the scheduled airlines in 1955, in no year since could any such basis have been asserted for expanding supplemental operations.

The Board has not, in any public pronouncements since 1955, reaffirmed its 1955 decision on the basis of reevaluation in the light of developments since 1955. It has, at each stage, merely said this was decided then, and so should be done. Indeed, the current Board is in the paradoxical position of asking the Congress to amend the act so it can certificate the supplementals for the scope of operations deemed sound in 1955—or for an undefined greater scope of operations—while at the same time it asks the Congress for an appropriation to hire outside consultants to make a "study" and tell it what the proper role of the supplementals should be. The Board has requested a $50,000 ap-

propriation for this purpose. Part of the justification for this request, in the Board's testimony before the Subcommittee on Independent Offices, House Committee on Appropriations, on March 27 of this year, was "We have to have some detailed thinking based on studies of what should be the role of the supplemental air carriers in the future * * *. I do not think any of us can give you any answer today on what we think it should be."

The situation is accordingly this: The "health and prosperity" basis of the 1955 decision is exploded. The Board has not reexamined that decision. The Board appears uncertain that its prior decision was right.

Under all the circumstances, we submit that this is no time for the Congress to enlarge the operating authority of the supplemental air carriers. Nor is it a time for the Congress to empower the Board to enlarge the supplementals' operating authority, in an undefined manner, at an indefinite future time, under a scheme which involves basically unsound regulatory principles. The most that the Congress should do, at this time, would be to amend the act so as to make clear that the Board could issue certificates for all-charter operations.

Such congressional action would not foreclose the Board from completing its studies—either through outside consultants or through its own staff—and then proceeding as an up-to-date evaluation of the problem might indicate. Meanwhile, the supplementals would be enabled to conduct all-charter operations, on a sensible and practical basis, consistent with the regulatory precepts of the act.

Hearings Before the Aviation Subcommittee of the Committee on Commerce on Supplemental Air Carriers, Senate, 87th Congress, 1st Session

STATEMENT OF CHAIRMAN BOYD

p. 5:

* * * * *

"The Board therefore, on April 28, 1960, submitted to this Committee proposed legislation to correct the deficiencies in the Board's legal authority which were found to exist by the court."

* * * * *

p. 111:

* * * * *

MR. BURWELL. * * *

"There is an area where the travel agent is important because he does organize and generate this travel and traditionally people go to him, but the protection against taking ordinary individual ticketed passengers is that everybody in the airplane is going on an all-expense tour, so, again, it seems to me that it is well worth a look of the committee in the promotion of tourism and so on to take a look at the all-expense tour method of travel.

"SENATOR MONRONEY. Would that be on a charter basis, in your estimation?

"MR. BURWELL. I don't think it is technically—well, it is not a charter basis under the present Board rules. Under the definition that we would like to get it would be."

* * * * *

p. 268:

"SENATOR MONRONEY. I don't quite agree, because I think you have to supply the people who are willing to go and come according to the terms of the charter.

"MR. STRATTON. This is if you have written round trip into it again.

"SENATOR MONRONEY. Even going one way, leaving at the same hour and the same day. You have a choice of 10 schedules going out on a certificated airline. You can go down and get on a plane in the morning or the afternoon or evening, but you would have to leave at a time certain with a group certain to go on a certain route. By definition, it occupies a very great distinction from your normal ticketed traffic.

"MR. STRATTON. What we are trying to get at, you see, is preservation of a distinction so that it does not open the door to simply the selling of individual tickets to members of the general public—

"SENATOR MONRONEY. This committee is with you on that. We recognize the value of protecting that, but I still think you can arrive at so many restrictions, the homogeneity, or whatever it is called, all these things, that they are merely a device in which you can cut charter down to a mere trickle for people that it actually was designed to serve.

"MR. STRATTON. Quite conceivably you could be so restrictive as to do that. You can also be so loose as to completely upset the ticketed route structure that you are trying to preserve and this is where the problem has come in, through the years, and the Board's

attempts to define charter I would kind of like to review.

"For example, one of the problems that arose was during the year 1950. The Board had a very loose definition in the lines of what we were just talking about, permitting ticket agents or other intermediaries to form the groups from general public and to charter the airplanes. The Board abandoned that policy in 1951 as a result of their experience with the 1950 results, which wound up in the latter part of that year, particularly, with a great many passengers being stranded in Europe, and with a great many delays in college boys and other people getting home, part of which was because their contract was with an intermediary, the man that put the group together. He allegedly had a contract with the carrier, but the charter group was having a little difficulty trying to find out who was responsible. They had no direct contract with the carrier. This led, as I say, to the Board's abandoning that approach in the North Atlantic after its rather unsatisfactory experience in 1950."

pp. 269-271:

* * * * *

"SENATOR MONRONEY. And they have a whole lot of other gimmicks. I ran into one where social workers were recruited from leading colleges in the country and were seeking charter service to go to England and work in the social agencies of England. They have a very good international exchange of people.

"These were students. They ran into one of these nice little roadblocks that the IATA regulations have,

that the kids did not know that they were going to be passing their work, whether they would have to go to summer school to make up things, so they could not belong 6 months before the time of departure.

"Consequently, you run into this complicated, idiotic interpretation. They had to be individually ticketed, although they were in a group certainly within the meaning of what any definite organization is. They were going to live together, work together, do social work together, and were carefully recruited by the leading colleges to engage in this. Yet because they could not commit themselves 6 months ahead, since most of them were selected only 3 months ahead, they go over by individual ticketed fare, which is a great deal higher, and then it is Okay to charter them coming back, the same group.

"They were no more homogeneous on their return than they were on their departure, I hope, and this bit of idiocy that we get into on the interpretation that I think is making Congress rather impatient with what appears to be not an effort to encourage the legitimate charter but to prohibit by all possible redtape the proper use of it.

"MR. STRATTON. Don't misunderstand me, Senator, as I said a moment ago, IATA has a difficult problem trying to write a definition that gives an adequate scope of charter without permitting it simply to be turned into a thing that can be used to break your ticketed route and fare structure.

"The Board has been at this for some time, and I am not holding a brief for any particular thing that is now

in the regulation. But this regulation, the transatlantic charter policy has been amended, I believe, almost every year since it was first promulgated in 1955. It has been a constant revision process in the light of experience to attempt to deal with problems that have been discovered as they arise, both in the sense of closing loopholes, if necessary, and in the sense of eliminating restrictions that turn out to be unnecessary or for one reason or another impractical or unworkable.

"The Board now has instituted a transatlantic passenger charter investigation, one of the things as I understand it, as I believe Chairman Boyd said, is a fresh look at those rules.

"Now, part of my point there is that because of the complexity of the problems that are involved, this is an area in which I believe there has to be a certain amount of flexibility for the administrative agency to promulgate regulations and to change them from time to time. You have a great deal of risk, if you attempt to adopt one definition to last forever, covering all of the various phases of the problem, that you discover you just did it wrong.

"SENATOR MONRONEY. 207 has worked well, you say, in the domestic side?

"MR. STRATTON. 207 has worked well.

"SENATOR MONRONEY. Why would not it work well on international?

"MR. STRATTON. Basically that is the international rule. The problem that they ran into, as I understand

it, when they got to transatlantic charters, was largely in this area of what is solicitation from the general public? This has not been an acute problem domestically. It might be sometime."

---

p. 281:

STATEMENT OF PURPOSE AND NEED FOR PROPOSED LEGISLATION PREPARED BY CIVIL AERONAUTICS BOARD

(A bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes)

The Board, on January 28, 1959, in the "Large Irregular Air Carrier Investigation," Docket 5132, issued temporary certificates of public convenience and necessity for supplemental air service to a number of air carriers found by the Board to be fit to receive them. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services. This authorization was limited to interstate air transportation. It was the latest step in the development of this industry which was originally known as large irregular air carriers.

A number of air carriers certificated to render route-type service petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the Board's order and opinion of January 28, 1959. On April 7, 1960, the

court rendered its decision in *United Air Lines et al. v. Civil Aeronautics Board* (278 F. 2d 446), in which it found that the Board's action in certificating supplemental air carrier operations was legally deficient in three respects:

1. The certificates issued by the Board do not specify the terminal and intermediate points between which air transportation is authorized but grant a blanket authorization to operate between any two points in the United States.

2. The certificates issued by the Board contain a limitation of 10 flights per month in the same direction between the same two points. In the opinion of the court, this limitation was in violation of section 401(e) of the act which provides: "No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules * * *."

3. In referring to the determination of fitness required by section 401(d) of the act, the court pointed out (one judge dissenting) that the Board gave the same nationwide cargo and passenger authority to each of the applicants to which it issued certificates. The court stated that in many instances the prior operations of the individual applicants had been small or specialized and that their financial resources were inadequate for the newly authorized operations. It would thus appear that the court's standard of fitness that each carrier must establish would be greater than that found by the Board to be necessary for supplemental service.

As a stopgap measure to avoid immediate cessation of the supplemental air carrier industry, the Congress enacted

Public Law 86-661, approved July 14, 1960. Under this legislation the Board is given temporary authority to permit supplemental air carriers to conduct operations for 20 months. However, legislation of a more permanent nature is needed if there is to be any assurance that the supplemental air carrier industry is to continue in existence.

The Board has found that the supplemental air carriers have performed a useful public service and have a definite place and role in meeting this Nation's air transportation needs. There can be no doubt that the continued existence of the irregular air carrier fleet is of real value in terms of national defense, and it is evident that the future ability of the irregular air carriers to serve the military, as they are doing now and have done so ably in the past, depends upon their ability to operate their planes in commercial activities when not engaged in service for the military.

The Board recommends changes in the law as follows:

1. The law should be made clear that a carrier may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers, and the Board should be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized.

2. The Board should be authorized to grant a blanket authorization without having to designate specific points.

3. The present stringent requirement of fitness should be reduced so that only general findings of fitness need be made for supplemental service.

4. Statutory operating rights should be granted to the existing holders of supplemental air carrier certificates in the nature of a "grandfather" provision, thus assuring the continuity of operations presently being conducted by the supplemental air carriers.

The draft bill attached has been prepared to carry out these recommendations.

---

p. 282:

THE SECRETARY OF COMMERCE
Washington, D.C., June 29, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 26, 1961, requesting the views of the Department on S. 1969, a bill to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers, and for other purposes.

S. 1969 would amend the Federal Aviation Act so as to provide for certification of a class of direct air carriers distinctive from the class of air carriers historically certificated under sections 401(d) (1) and (2) of the act, the new class to be known as supplemental air carriers; that such carriers may request, and be authorized to perform, limited services supplemental to those furnished by the regular air carriers; that the Civil Aeronautics Board be expressly authorized to issue certificates of public convenience and necessity for supplemental service containing limitations on the type and extent of service authorized;

that the Board be authorized to grant blanket authorizations without having to designate specific points.

The act would also be amended to reduce the present standards of fitness required for certification as an air carrier so that only general findings of fitness need be made for supplemental service. S. 1969 would also provide for grant of statutory operating rights to the existing holders of supplemental air carrier certificates, in the nature of "grandfather" rights.

On January 28, 1959, in the Large Irregular Air Carrier Investigation, CAB Docket 5132, the Board issued temporary certificates of public convenience and necessity for supplemental air carrier operation in interstate air transportation. Under these certificates, supplemental air carriers were authorized to conduct without reference to any specified terminal or intermediate points not more than 10 flights carrying individually ticketed passengers or individually waybilled property in the same direction between any single pair of points in any calendar month, and to render unlimited planeload charter services.

The issuance of such certificates was challenged in the courts by regularly authorized air carriers, i.e., air carriers certificated to render route-type service. On April 7, 1960, the U.S. Court of Appeals for the District of Columbia Circuit set aside the Board action of January 28, 1959, *United Air Lines et al.* v. *Civil Aeronautics Board* (278 F. 2d 446). The court found that the certificates issued for supplemental air service did not specify the terminal and intermediate points between which air transportation had been authorized, contained limitation as to the number of flights contrary to section 401(e) of the act, and were not

based on standards of fitness for applicants for certificate required by section 401(d) of the act.

As a stopgap measure to avoid immediate cessation of 25 supplemental air carrier authorizations, the Congress enacted Public Law 86-661, approved July 14, 1960. Such legislation was designed to maintain the status quo of the supplemental air carriers for up to 20 months after enactment so as to permit further consideration to be given the entire matter of supplemental air transportation without interim cessation of the then-existing authority of the carriers involved.

This Department is of the opinion that the continued existence of the supplemental air carrier fleet is of real value in terms of national defense. At the present time eight supplemental air carriers have executed Civil Reserve Air Fleet (CRAF) standby contracts which provide for the furnishing of air transportation on an international scale to the Department of Defense in the event of war or national emergency.

Of a total of 212 aircraft allocated by the Department's Defense Air Transportation Administration to the basic CRAF program, 40 have been allocated from supplemental air carrier inventories. In addition, the aircraft remaining in such air carrier inventories after CRAF requirements have been met (approximately 123 in number) are subject to DATA's allocation authority for purposes of DOD domestic wartime requirements, such as the Navy's Quicktrans and the Air Force's Logair operations, and for the needs of civil economy under the war air service pattern program.

The Department also concludes that it would be unrealistic, as well as inherently unsound, for the continued existence of the supplemental air carriers to be entirely dependent in peacetime upon military business. Therefore, p. 283:

we agree that supplemental airlines should be eligible to operate their planes in peacetime in commercial air services.

Accordingly, the Department supports the proposed legislation.

The Bureau of the Budget advises there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

CONGRESSIONAL RECORD

A. House of Representatives

Vol. 107, p. 20081:

"MR. HARRIS. * * * This legislation will keep the supplemental air carrier industry in business * * * We feel the substitute bill more adequately establishes a program that will give true supplemental airline service. Still it provides restrictions that will protect regular airline service and the general public * * *."

Vol. 108, pp. 12322-12323:

"MR. WALTER. First, I want to commend the gentleman and his colleagues on the conference on the fine work which they did in maintaining the basic position of the House. I am glad that the future role of the supplementals will be confined to the charter field. However, I have a question about the charter definition.

"As I recall the Senate bill, it included language that would have changed the longstanding concept of the meaning of 'charter' in the airline field.

"MR. WILLIAMS. That is quite true.

"MR. WALTER. It proposed that all-expense travel agents could charter airplanes in their own name and then sell space to the public for all-expense tours. This would have changed completely the function of the travel agent and put him in position to engage in rate cutting.

"Can the gentleman tell us what happened to that provision?

"MR. WILLIAMS. The Senate receded and accepted the position of the House on that provision. So, there is no statutory definition of 'charter' in the bill. That definition will be the one which is presently in effect under a regulation of the Civil Aeronautics Board. The all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in our position on that, also.

"MR. HARRIS. Mr. Speaker, will the gentleman yield?

"THE SPEAKER pro tempore. The time of the gentleman from Mississippi has again expired.

"MR. HARRIS. Mr. Speaker, I yield the gentleman an additional 3 minutes.

"Mr. Speaker, will the gentleman yield?

"MR. WILLIAMS. Yes, I yield to the gentleman from Arkansas.

"MR. HARRIS. The gentleman is correct. The Senate proposed to change the well established meaning of 'charter.' The House objected to changing it. Therefore, the bill reported by the conferees contains no definition of charter because the Senate receded. The language the gentleman was concerned about is not in the bill.

"A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for a particular purpose by a single engaging party. Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own

account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the "all-expense tour" language. As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter.

"If I may I would like to read a statement I have prepared on this point:

"The bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the

bill, as passed by the House, contained no definition of charter.

"The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter, of "a group on an all-expense paid tour." The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy.

"MR. WALTER. I thank the gentleman for his assurances that there has been no change in the meaning of a charter. This is a very important point. Certainly, all the efforts to bring to an end the many problems in the supplemental airlines which stemmed from their individually ticketed authority would be of no avail if they were allowed to engage in split-charters, all-expense tours or other devices for destroying the meaning of charter and engaging in a type of individually ticketed authority, under some guise or other. I am glad the position of the Congress on this is crystal-clear."

Vol. 108, p. 12324:

"MR. COLLIER. Mr. Speaker, the bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the

entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services.

"Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus, the bill, as passed by the House, contained no definition of charter.

"The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter, of "a group on an all-expense-paid tour." The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy."

Congressional Record

B. Senate

Vol. 107, pp. 17163-17164:

"MR. SCHOEPPEL. • • •

"Mr. President, the pending bill is a comprehensive one which will establish a permanent and constructive role in aviation for the supplemental airlines. It represents a tremendous amount of effort on the part of the Aviation Subcommittee which is so ably headed by the Senator from Oklahoma [MR. MONRONEY]."

• • • • •

"• • • The Cotton amendment requires the Civil Aeronautics Board to impose limitations on the individually ticketed operations of the supplemental air carriers to assure that their flights will not significantly divert traffic from the regular airlines which form the backbone of our air transportation system.

"This protection for the regular airlines is essential in my view and in the view of the Senator from New Hampshire [MR. COTTON] for these are the air carriers which fly on the lean days as well as on the rush days. They serve the smaller cities as well as the big ones, and they can only provide that service if they have reasonable protection against operators who can pick and choose, operators who can fly the high profit coast-to-coast runs and ignore the cities in between. • • •

• • • • •

"Let me make one other point. This is not a bill which makes everybody happy. Neither the regular airline carriers nor the supplemental airlines are completely happy with it. I am sure that each of these

groups would like a number of things changed. But I believe the bill represents an honest, fair, and forthright effort to resolve the difference on the basis of the public interest."

* * * * *

Vol. 107, p. 17162:

"MR. MONRONEY. Mr. President, this is a very complicated and difficult piece of legislation * * * It seeks to provide a permanent place in the aviation industry for supplemental air carriers without adverse effect upon scheduled carriers * * *"

Vol. 108, p. 12283:

"MR. MONRONEY. * * *

"The charter definition contained in the Senate version of the bill was omitted from the bill agreed to by the conferees. This was done unilaterally by the Senate conferees because of the decision which had been made on individually ticketed authority. The charter definition would have operated to prohibit the granting of split charters—that is, the transportation of more than one charter group in a single aircraft. We felt that the Board should be left free to determine on its merits the desirability of permitting the supplemental carriers to conduct such charters, in view of the fact that the charter business will ultimately represent the only source of revenue for these carriers. Another reason why we desired to leave the Board sufficient flexibility so that it might permit split charters was the

effort of the Defense Department to encourage these carriers to acquire modern turbine-powered equipment for the civil reserve air fleet. The size of such aircraft makes it virtually impossible to find a charter group sufficiently large to fill an entire aircraft."

Vol. 108, pp. 12284-12285:

"MR. COTTON. • • •

"I do wish to comment briefly on one aspect of the conference committee's action. The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on charter flights to individual members of the general public who were on all-expense-paid tours. I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board.

"The elimination from the bill of the general Senate language defining charter service should not, however, in my view, be construed as giving the Board any kind of carte blanche with respect to long-established principles of law relating to charters. The Civil Aeronautics Board has, in the past, rejected proposals to water down the safeguards against the abuse of charter service, and I hope the Board will continue to be firm in this respect. The Board has a serious obligation to see that charter services do not become individually ticketed services through subterfuge or abuse."

"MR. SCOTT. • • •

"While the bill thus contemplates only charter services by the supplementals, it does not define "charter."

It does not need to do so. The act has, since 1938, authorized charter trips by scheduled airlines without regard to the points named in their certificates under Board regulations. The meaning of charter in air transportation has become well established law, and it would have been superfluous to write it into the present bill.

"A charter, in air transportation, means that a single person or organization has contracted for the entire capacity of the aircraft for a given trip or a given time. This is entirely distinct from the situation where a person or group of persons buy tickets for some seats on the airplane, and other persons or groups buy tickets for other seats on the airplane. There could, for example, be no such thing as a "charter" for half, or some other fraction, of the airplane, with the remainder of the seats on the plane being sold to individually ticketed passengers, or ostensibly "chartered" to additional persons or groups.

"Another essential element is that the person who charters an airplane cannot resell the space to individuals or solicit the general public to buy space. This is necessary to prevent breakdown of the regulatory system, and most particularly the rate regulatory system. If this were not one of the rules, a travel agent could charter an airplane, and then offer the seats to the general public at less per head than the tariff fares the airplane must observe as to each passenger.

"The Senate bill proposed to modify the established concept of charter by permitting charters to "a group

on an all-expense-paid tour." Such a group could have been assembled from the general public. This would have meant that travel agents could have chartered aircraft, and then sold the space to ordinary passengers traveling on all-expense tours.

"The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air transportation. There should be no question about that. The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation. This being the thrust of the congressional action, it would be clearly improper if the Civil Aeronautics Board were hereafter to undertake to rewrite the law and to authorize, under guise of charter, all-expense-tour operations, or split charters for less than the entire capacity of the airplane.

"I mention the latter point because I understand there have been proposals, from time to time, that the Board should by administrative fiat do to the definition of "charter" what the Congress has refused to do. The record, in my view, is clear that the Board has no such latitude.

"MR. THURMOND. Mr. President, I should like to emphasize the great importance of maintaining the concept of charter which has historically prevailed in the CAB economic regulations. This concept is that a charter consists of a full planeload comprised of a single homogeneous charter party.

"I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision.

"Therefore, I want to emphasize that the CAB must continue its historic charter definition. Any erosion of this concept would defeat the purpose of this supplemental legislation, and would undermine the congressional intent that the supplementals, after the 2-year phasing out period, shall not conduct any individually ticketed business, but, rather, shall concentrate exclusively on full planeload charters.

"Air transportation has suffered from the abuses of individually ticketed operations. The law violations in this area have all too frequently extended to infractions of safety provisions as well. It is for this reason that I want to emphasize the insistence of Congress that supplemental operations shall be confined to full planeload charter operations exclusively."

Public Law 86-661
74 Stat. 527

AN ACT

To provide that the Civil Aeronautics Board may temporarily authorize certain air carriers to engage in supplemental air transportation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Civil Aeronautics Board (hereafter in this Act referred to as the "Board") is empowered—

(1) to validate for a period not to exceed twenty months from the date of enactment of this Act, without further proceedings, any temporary certificate of public convenience and necessity for supplemental air transportation issued pursuant to Board Order E-13436 of January 28, 1959, or Board Order E-14196 of July 8, 1959, which certificate has not been revoked or otherwise terminated by the Board on or before the date of enactment of this Act; and

(2) to confer interim operating authority to engage in supplemental air transportation for a period not to exceed twenty months from the date of enactment of this Act upon any person or air carrier which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board Order E-9744 of November 15, 1955, or (B) has an application for a certificate as a supplemental air carrier pending before the Board on the date of enactment of this Act.

SEC. 2. (a) Nothing in this Act shall be construed to affect the authority of the Board—

(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board Order E-13436 of January 28, 1959, or Board Order E-14196 of July 8, 1959, or against the holder of any operating authority conferred under Board Order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act; or

(2) to institute, on or after the date of enactment of this Act, any enforcement or compliance proceeding or action against the holder of any certificate or operating authority referred to in paragraph (1) of this subsection with respect to any violation of (A) the provisions of the Federal Aviation Act of 1958, (B) the provisions of such certificate, (C) the terms of such operating authority, or (D) the regulations of the Board, without regard to when such violation occurred.

Any sanction which the Board lawfully could have imposed on the operating authority of an air carrier for any violation referred to in paragraph (2) of this subsection which occurred before the validation of a certificate of public convenience and necessity for, or before the conferring of any operating authority for, supplemental air transportation under this Act, may be imposed on the operating authority of such air carrier granted under paragraphs (1) or (2) of the first section of this Act.

(b) The authority granted to the Board under this Act shall not affect any other authority of the Board to license air carriers to engage in supplemental air transportation.

(c) Any certificate validated, and any operating authority conferred, by the Board under this Act shall extend to service between the State of Hawaii and the other States of the United States to the extent that such service was authorized pursuant to Board Order E-9744 of November 15, 1955. For the purposes of any such certificate or operating authority, the State of Hawaii shall be considered one point.

Approved July 14, 1960.

SUPREME COURT, U. S.
No. 946
MAR 14 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967

CIVIL AERONAUTICS BOARD, PETITIONER

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD

ERWIN N. GRISWOLD,
Solicitor General,
DONALD F. TURNER,
Assistant Attorney General,
FRANK M. WOZENCRAFT,
Assistant Attorney General,
JOSEPH J. CONNOLLY,
Assistant to the Solicitor General,
HOWARD E. SHAPIRO,
Attorney,
Department of Justice,
Washington, D.C. 20530.

JOSEPH R. GOLDMAN,
General Counsel,
O. D. ozment,
Deputy General Counsel,
WARREN L. SHARFMAN,
Associate General Counsel,
Litigation and Legislation,
ROBERT L. TOOMEY,
Attorney,
Civil Aeronautics Board,
Washington, D.C. 20428.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Statute involved	2
Questions presented	2
Statement	2
Summary of argument	6
Argument	9
I. The Federal Aviation Act empowers the Civil Aeronautics Board to authorize supplemental air carriers to offer inclusive-tour service as a form of "charter" service	9
A. The 1962 amendments to the Act grant the Board a broad discretion to define "charter" service	9
B. The Board's definition of "charter" service as covering inclusive tours is reasonable and should be upheld by the courts	23
II. The procedural issues raised by respondents below, but not decided, are without merit, and this Court should dispose of them without remanding for further proceedings	30
Conclusion	36
Appendix	37

CITATIONS

Cases:

Accardi v. *Pennsylvania R. Co.*, 383 U.S. 225 — 30

American Airlines, Inc. v. *Civil Aeronautics Board*, 235 F. 2d 845, certiorari denied, 353 U.S. 905 — 11

American Airlines, Inc. v. *Civil Aeronautics Board*, 348 F. 2d 349 — 3, 20, 22, 28, 31

American Airlines, Inc. v. *Civil Aeronautics Board*, 365 F. 2d 939 — 4, 20, 26, 28, 31

Brooks v. *Dewar*, 313 U.S. 354 — 32

Chicago & N.W. R. Co. v. *Atchison, T. & S.F. R. Co.*, 387 U.S. 326 — 30

293-610—68——1

Cases—Continued

	Page
Chicago & S. Air Lines, Inc. v. *Waterman Steamship Corp.*, 333 U.S. 103	5, 31, 32
Civil Aeronautics Board v. *Delta Air Lines, Inc.*, 367 U.S. 316	5, 30, 32
Civil Aeronautics Board v. *State Airlines, Inc.*, 338 U.S. 572	35
Consolo v. *Federal Maritime Commission*, 383 U.S. 607	30
Duplex Printing Press Co. v. *Deering*, 254 U.S. 443	20
Federal Trade Commission v. *Flotill Products, Inc.*, 389 U.S. 179	31
Gray v. *Powell*, 314 U.S. 402	23
Hardin v. *Kentucky Utilities Co.*, No. 40, this Term, decided January 16, 1968	23
IATA Agreements, Group Excursion Fares, 26 C.A.B. 755	18
International Airfreight Forwarder Investigation, 27 C.A.B. 658	18
Interstate Commerce Commission v. *City of Jersey City*, 322 U.S. 503	34
Large Irregular Air Carrier Investigation, 22 C.A.B. 838	10, 13
Levin v. *Mississippi River Fuel Corp.*, 386 U.S. 162	10
National Labor Relations Board v. *Coca-Cola Bottling Co.*, 350 U.S. 264	23
North American Airlines v. *Civil Aeronautics Board*, 240 F. 2d 867, certiorari denied, 353 U.S. 941	10
Pan American World Airways, Inc. IATA Agreements, 23 C.A.B. 275	18
Pan American World Airways, Inc. v. *Civil Aeronautics Board*, C.A.D.C., Nos. 20,860 and 21,149 (decided January 31, 1968)	31
Power Reactor Co. v. *Union of Electrical Workers*, 367 U.S. 396	24
Rabinowitz v. *Kennedy*, 376 U.S. 605	32
Schwegmann Bros. v. *Calvert Corp.*, 341 U.S. 384	21
Secretary of Agriculture v. *Central Roig Refining Co.*, 338 U.S. 604	32
Tauck Tours, Inc., Extension—New York, N.Y., 52 M.C.C. 373, affirmed *sub nom. National Bus Traffic Ass'n* v. *United States*, 143 F. Supp. 689, affirmed *per curiam*, 352 U.S. 1020	24, 25

Cases—Continued Page
Udall v. *Tallman*, 380 U.S. 1 23
United Air Lines, Inc. v. *Civil Aeronautics Board*, 278 F. 2d 466, vacated, 364 U.S. 297 12
United States v. *Pierce Auto Freight Lines, Inc.*, 327 U.S. 515 ..... 34, 35
United States v. *United Automobile Workers*, 352 U.S. 567 ..... 20, 21
Statutes and rules:
Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301, *et seq.*:
Sec. 101(10), 49 U.S.C. 1301(10) 37
Sec. 101(32), 49 U.S.C. 1301(32) 37
Sec. 101(33), 49 U.S.C. 1301(33) 2, 37
Sec. 201(c), 49 U.S.C. 1321(c) 31
Sec. 401(d)(1), 49 U.S.C. 1371(d)(1) 38
Sec. 401(d)(2), 49 U.S.C. 1371(d)(2) 38
Sec. 401(d)(3), 49 U.S.C. 1371(d)(3) 2, 38
Sec. 401(e), 49 U.S.C. (1958 ed.) 1371(e) 11
Sec. 401(e)(4), 49 U.S.C. 1371(e)(4) 19
Sec. 401(g), 49 U.S.C. 1371(g) 32, 33, 34
Sec. 416(b), 49 U.S.C. 1386(b) 10,
Sec. 417, 49 U.S.C. 1387 17
Sec. 801, 49 U.S.C. 1461 ..... 4, 31, 39
Sec. 1006(a), 49 U.S.C. 1486(a) 39
Sec. 1006(e), 49 U.S.C. 1486(e) 32
P. L. 86–661, 74 Stat. 527 12
P. L. 87–528, 76 Stat. 143, Section 9 17
5 U.S.C. (Supp. II) 556(e) 35
14 C.F.R. 207.1 (January 1, 1966) 18
14 C.F.R. 302.24(m) 35
14 C.F.R. 378.2, 378.10–378.15 29
Congressional:
108 Cong. Rec. 12283 ..... 21, 22
108 Cong. Rec. 12323 22
108 Cong. Rec. 12324 22
H. R. 7318, 87th Cong., 1st Sess 7, 15, 16, 20, 23
H. Rep. No. 1177, 87th Cong., 1st Sess. 4, 9, 12, 15, 16, 18, 20, 23
H. Rep. No. 1950, 87th Cong., 2d Sess. (Conference Report) 7, 17, 19, 21
S. 1969, 87th Cong., 1st Sess 12, 13, 14, 16, 19, 21, 22
S. Rep. No. 688, 87th Cong., 1st Sess 9, 12, 13, 14, 18, 22

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 946

CIVIL AERONAUTICS BOARD, PETITIONER

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE CIVIL AERONAUTICS BOARD

OPINION BELOW

The opinion of the court of appeals (R. 1119a) is reported at 380 F. 2d 770.

JURISDICTION

The judgment of the court of appeals was entered on July 20, 1967 (R. 1144a). Timely petitions for rehearing and rehearing *en banc* were denied on September 29, 1967 (R. 1146a). The petition for a writ of certiorari was filed on December 22, 1967, and was granted on January 29, 1968. The jurisdiction of this Court rests upon 49 U.S.C. 1486(f) and 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301 *et seq.*, are set out in the Appendix, *infra*, pp. 37–40.

QUESTIONS PRESENTED

1. Whether the Civil Aeronautics Board has the statutory power to authorize supplemental air carriers to offer inclusive-tour charter service.

2. Whether the present orders are invalid because of alleged defects in the administrative proceedings.

STATEMENT

In 1962 Congress amended the Federal Aviation Act to authorize the Civil Aeronautics Board to grant certificates of public convenience and necessity for "supplemental air transportation" (Section 401(d)(3) of the Act, 49 U.S.C. 1371(d)(3), App. *infra*, pp. 38–39). "Supplemental air transportation" was defined as "charter trips in air transportation * * * to supplement the scheduled service" which regular-route carriers are authorized to provide (49 U.S.C. 1301(33), App. *infra*, p. 37).

This case involves several Board orders adopted on March 11, 1966, which awarded certificates of public convenience and necessity to various supplemental air carriers[1] authorizing them to engage in "supplemental air transportation (including inclusive tour[2]

[1] Supplemental air carriers previously had been known as "non-scheduled" or "large irregular" air carriers.

[2] In general, "inclusive tours" are synonymous with the familiar "all-expense" or "package" tour which includes not only the basic air transportation but various land arrangements, such as hotel accommodations, meals, and sightseeing; "inclusive-tour

authority) with respect to persons and property" between points in the United States and various foreign points (R. 566a–595a, 1083a–1088a, 1107a–1118a).[3] On the same date the Board also awarded certificates to other supplemental carriers which authorized inclusive tours in domestic operations.[4]

The Board determined that it had statutory power to authorize inclusive-tour charters because: (a) such charters fall within the generally accepted concept of charter operations; (b) the legislative history of the 1962 amendments to the Federal Aviation Act demonstrates that Congress intended to leave the interpretation and application of the term "charter trips" used in the statute largely to the Board;[5] and (c)

---

charters" are arrangements by which the air carrier charters the aircraft to a "tour operator", a travel specialist who sells the package tour to the public for a single price.

[3] Order E–24237 (R. 543a) issued in the *Supplemental Air Service Proceeding* (Docket No. 13795), and Order E–24240 (R. 1060a), issued in the *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase) (Docket No. 11908), which added inclusive-tour authority to the certificates previously granted to Capitol Airways and Saturn Airways.

[4] Order E–23350 (R. 332a).

[5] In *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (C.A.D.C.), sometimes referred to as the "split-charter" case, the respondents here challenged an earlier order of the Board in the *Transatlantic Charter Investigation* which permitted the supplementals to charter a single aircraft to two separate groups. They contended that the Board had exceeded its statutory authority, relying upon the same arguments which were advanced to and accepted by the court below in this case. After reviewing the legislative history, the court of appeals concluded that Congress intended to permit the Board to evolve any reasonable definition of charter, so long as the basic distinction between group and individual travel was maintained (348 F. 2d at 354).

such authorization would further the overall purpose of the 1962 amendments, which was to strengthen "the economic outlook for the industry" [6] (Order E–23350, R. 140a, 336a).

Since C.A.B. orders involving international routes must be approved by the President before publication,[7] only the order dealing with domestic service was immediately subject to judicial review. Respondents sought review of that order in the Court of Appeals for the District of Columbia Circuit, contending that the inclusive-tour charters were not "charter trips" and that the Board awards were therefore in excess of its statutory authority. The court rejected respondents' contention and affirmed the order, holding that the Board's interpretation of its statutory authority "comports with the overall statutory intention of Congress." *American Airlines, Inc.* v. *Civil Aeronautics Board,* 365 F. 2d 939, 948.

The awards for international inclusive-tour charters involved in this case were approved by the President a few months after the decision of the District of Columbia Circuit. Respondents abandoned the steps they had taken to seek review of that decision by this Court, thus allowing the decision as to domestic orders to become final. Instead they sought review of the Board's international route orders in the Court of Appeals for the Second Circuit. That court set aside the Board's orders for international service, holding that "the term 'charter trips' was not intended

[6] H. Rep. No. 1177, 87th Cong., 1st Sess., p. 17.

[7] Section 801 of the Act, 49 U.S.C. 1461, App. *infra*, p. 39.

to embrace the inclusive tour charters authorized by the Board's orders" (R. 1131a). The court concluded that inclusive tours "violate basic policies of the Act" because the participants in such tours are solicited from among members of the general public. In reaching this conclusion, the court relied primarily on statements made during the floor debates to which the District of Columbia Circuit had refused to give controlling effect because they were in conflict with the Committee Reports (R. 1136a). In view of its determination that the awards of inclusive-tour authority exceeded the Board's statutory power, the court below did not reach respondents' contentions that the orders were invalid by reason of certain procedural defects.

The alleged procedural defects (discussed *infra,* at pp. 30–35) were: (1) that the record in the *Transatlantic Charter Investigation* (in which some of the certificates were awarded) was unduly stale and should have been reopened for new evidence; (2) that the awards of inclusive-tour authority to two carriers in the *Transatlantic* case contravened this Court's decision in *Civil Aeronautics Board* v. *Delta Air Lines, Inc.,* 367 U.S. 316; and (3) that the awards in the *Transatlantic* case were based in part upon officially noticed data which respondents were given no opportunity to rebut. The Board urged below that consideration of these issues was barred under this Court's decision in *Chicago & S. Air Lines, Inc.* v. *Waterman Steamship Corp.,* 333 U.S. 103, and because they were not raised before the Board; and alternatively, that the allegations of procedural error were without merit.

293-610—68——2

SUMMARY OF ARGUMENT

I

The basic purposes of the 1962 amendments to the Federal Aviation Act were to establish a stable and viable role for the supplemental carriers in the air transportation system and to provide the Civil Aeronautics Board with appropriate statutory authority to bring the supplemental carriers within the regulatory scheme of the Act. In resolving the conflict between the economic interests of the supplementals and those of the scheduled carriers, Congress denied the Board the power to authorize supplemental carriers to offer individually-ticketed, point-to-point service in competition with the scheduled carriers. The Act empowers the Board to issue certificates to supplementals for charter services only.

The present controversy arises largely because the Act does not define "charter." The legislative history of the 1962 amendments, however, persuasively demonstrates that Congress intended that the Board should evolve an appropriate definition of charter, so long as it maintained the distinction between group and individually-ticketed transportation. The bill passed by the Senate authorized the Board to issue certificates to supplementals for both charter and individually-ticketed service, and it contained a definition of charter which specifically included the inclusive-tour service here in issue. Since the Senate bill required the Board to include restrictions designed to protect the scheduled carriers in certificates issued for the supplementals' individually-ticketed service, the

definition of charter was necessary to delimit the types of supplemental service which could be authorized without such restrictions. The bill which the House passed, however, did not empower the Board to authorize individually-ticketed service in addition to charter service. The House accepted its committee's recommendation that the bill should not include a definition of charter, because it was preferable for the Board to continue to have authority to define charter so that it could deal effectively with any attempt to distort the charter concept. Congress finally enacted a Conference Committee version of the bill, adopting the House position which limited the supplementals' service to charter trips and continued the Board's authority to define and apply the term charter.

In this context it cannot fairly be said that Congress' failure to include the Senate definition of charter in the Act constitutes a determination to prohibit inclusive-tour charters. The Senate definition was not intended to enlarge the standard definition of charter. By adopting the House rather than the Senate version, Congress merely determined that the Board should not be required to consider inclusive tours to be within the meaning of the term charter. But nothing in the House bill or its enactment history would have prevented the Board from adopting such an interpretation. The court below erroneously relied on personal interpretations made during the floor debates which contradict not only the committee reports but the normal meaning of the statutory language itself.

In view of the fact that Congress left the interpretation of charter to the Board, its interpretation, if

reasonable, should be respected by the courts. The Board's determination that inclusive-tour charters should be authorized is consistent with the established definition of charter in surface transportation. This authorization will effectuate the overall purpose of the 1962 amendments by improving the competitive position of the supplementals and their ability to serve the needs of the public. And the regulations adopted by the Board to govern inclusive-tour operations will assure that this type of service cannot be used as a substitute for the individually-ticketed service of the scheduled carriers.

II

If this Court holds that the Board may authorize inclusive-tour charters, the Court should rule on respondents' procedural objections to the Board's orders, which were not reached by the court below, without remanding for further proceedings. These objections are wholly without merit and should not be allowed to delay the final disposition of a case in which a prompt disposition is significantly in the public interest. The awards of inclusive-tour authority to two supplemental carriers who had previously received certificates in the *Transatlantic Charter Investigation* did not require further hearings. These awards were made as part of a disposition of applications for such authority by all six carriers in the case, some of whom had not previously received certificates. The statutory requirement for further hearings upon modification of a certificate is therefore inapplicable, and in all events the awards were made on the basis of full

hearings. The adequacy of the record in the *Transatlantic* case was a matter committed to the Board's discretion, and since respondents failed to assert any matter on which new evidence would be required, the Board did not abuse its discretion by refusing to reopen the hearings. Finally, respondents were not prejudiced by the Board's taking official notice of certain information, most of which was contained in reports which respondents had filed with the Board.

ARGUMENT

I. THE FEDERAL AVIATION ACT EMPOWERS THE CIVIL AERONAUTICS BOARD TO AUTHORIZE SUPPLEMENTAL AIR CARRIERS TO OFFER INCLUSIVE-TOUR SERVICE AS A FORM OF "CHARTER" SERVICE

A. THE 1962 AMENDMENTS TO THE ACT GRANT THE BOARD A BROAD DISCRETION TO DEFINE "CHARTER" SERVICE

1. The 1962 amendments to the Federal Aviation Act culminated nearly fifteen years of unsuccessful efforts by the Board to provide appropriate regulation of the supplemental air transportation industry under existing legislation.[8] Prior to and during World War II, the supplementals, then known as "irregulars,"

[8] The Board's efforts to regulate the supplemental carriers prior to the 1962 amendments are more fully described in the congressional committee reports accompanying that legislation. See S. Rep. No. 688, 87th Cong., 1st Sess., pp. 9–11 (Legislative Materials 112b–116b; hereinafter cited as Senate Rep.); H. Rep. No. 1177, 87th Cong., 1st Sess., pp. 7–9 (Legislative Materials 34b–39b; hereinafter cited as House Rep.). Excerpts from the legislative history of the 1962 amendments have been collected and reprinted as a separately bound appendix to the briefs of petitioners in this case and in Nos. 800 and 969. Citations to material reprinted therein will be accompanied by citations to the relevant pages in the "Legislative Materials."

were permitted to operate without certificates of public convenience and necessity under a blanket exemption issued by the Board pursuant to Section 416(b) of the Act (49 U.S.C. 1386(b). After the War, both the number of irregular carriers and the size of their aircraft increased substantially as the civilian market received an influx of large, transport-type aircraft and flight-trained personnel. The Board revised its exemption regulations in 1947 to preclude non-certificated irregular carriers operating large aircraft from offering individually-ticketed service "regularly or with a reasonable degree of regularity" between any two points; under the criteria established by the Board, as many as 8 to 12 flights per month could be made between the same points.

This limitation proved exceedingly difficult to enforce,[9] however, and in 1951 the Board initiated the *Large Irregular Air Carrier Investigation* (Docket 5132) for the purpose of determining the appropriate role of the large irregular carriers in the national air transportation system. The Board completed the first stage of this investigation in 1955 and issued findings that the large irregular carriers performed important supplementary services for military and civilian travelers which the regularly scheduled carriers could not

[9] One of the principal abuses was the "combine" operation, an arrangement whereby several irregular carriers pooled their operations to provide, in effect, daily scheduled service in competition with certificated carriers. See *Large Irregular Air Carrier Investigation*, 22 C.A.B. 838, 867–869, 931. See also *North American Airlines* v. *Civil Aeronautics Board* (North American Combine case), 240 F. 2d 867 (C.A.D.C.), certiorari denied, 353 U.S. 941.

economically perform.[10] The Board concluded that it would be in the public interest, and would not adversely affect the certificated carriers, to authorize the irregular carriers to offer unlimited charter service and scheduled, individually-ticketed service, limited to ten flights per month in the same direction between any two points.[11]

In 1959 the Board completed the second stage of the investigation—to determine the qualifications of individual carriers and the method by which the services should be authorized—and issued an order granting certificates of public convenience and necessity to 23 supplemental carriers authorizing them to perform the services described in its 1955 order.[12] On appeal, the Court of Appeals for the District of Columbia Circuit held that the certificates were invalid, in part because the Board was precluded by Section 401(e) of the Act[13] from issuing certificates which restrict the right of the carrier to add to or change schedules.

[10] See *Large Irregular Air Carrier Investigation*, 22 C.A.B. 838, 859–860.

[11] See *Large Irregular Air Carrier Investigation*, 22 C.A.B. 838, 866–872. As part of this order, concluding the "public interest issues" stage of the investigation, the Board issued an exemption giving the entire class of carriers the new authority on an interim basis, pending determination of the qualifications of individual carriers. In *American Airlines, Inc.* v. *Civil Aeronautics Board*, 235 F. 2d 845 (C.A.D.C.), certiorari denied, 353 U.S. 905, the court set aside this order on the ground that the Board had not made the statutorily required findings to support its exemption order (*id.* at 851–853). The court stayed its mandate, however, pending the Board's disposition of the remaining issues in the investigation, and the supplementals continued to operate under the new exemption standards.

[12] *Large Irregular Air Carrier Investigation*, 28 C.A.B. 224.

[13] 72 Stat. 755, 49 U.S.C. 1371(e) (1958).

United Air Lines, Inc. v. *Civil Aeronautics Board*, 278 F. 2d 446, vacated, 364 U.S. 297.

2. The Board thereupon submitted to Congress proposed legislation which would have given it the authority to issue certificates for supplemental air transportation containing limitations on the type and extent of service.[14] During the hearings, representatives of the scheduled-route carriers strongly opposed any grant of authority to the Board to permit supplemental carriers to maintain individually-ticketed, point-to-point service on a limited-schedule basis. All witnesses agreed, however, that the basic role of the supplemental carriers was to provide charter service.[15]

The bill passed by the Senate authorized the Board to issue certificates to supplemental carriers for both charter and individually-ticketed operations.[16] In addition, the Senate bill included a definition of "charter service" which specifically covered the inclusive-tour charters here in issue:

---

[14] Legislation proposing to give the Board this authority was introduced in April 1960 but was not enacted prior to the adjournment of the 86th Congress. Senate Rep. at 11 (Legislative Materials 116b); however, the 86th Congress passed legislation validating the certificates containing the ten-trip-per-month authority until March 1962. P.L. 86–661, 74 Stat. 527 (Legislative Materials 240b–242b).

[15] Senate Rep. at 12 (Legislative Materials 118b); House Rep. at 10 (Legislative Materials 40b).

[16] S. 1969, 87th Cong., 1st Sess., Sections 1 and 2 (Legislative Materials 92b–93b) [References to the Senate bill are to the substitute bill (also designated S. 1969), prepared and reported out by the Senate Commerce Committee and passed by the Senate, which is reprinted at pp. 1–5 of Senate Rep. (Legislative Materials 91b–103b). S. 1969, as introduced, is reprinted at Legislative Materials 1b–6b].

(13) "Charter service" means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, *but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour.*[17]

In explaining the purpose of this definition, the Report of the Senate Commerce Committee stated:

> However, it is not the intention of the committee to permit individually ticketed service to be offered under the guise of charter. The proposed statutory definition, therefore, provides that charter shall not include such individually ticketed service whether offered by an air carrier directly or by a travel agent.
>
> This restriction is subject to one exception because there is one circumstance in which a carrier or travel agent may offer the services to individual members of the public and *still conform to the traditional concept of charter.* This is in connection with an all-expense-paid group tour. *If a travel agent charters an aircraft for an all-expense-paid tour and then offers to individual members of the public the right to participate as a member of the group, this is a*

[17] S. 1969, 87th Cong., 1st Sess., Section 1. (Legislative Materials 92b; emphasis added).

very different sort of service from individually ticketed transportation.[18]

Although the Senate bill authorized both types of operations, there were important reasons why the Senate Report emphasized the difference between charter service, including inclusive-tour charters, and individually-ticketed service. The other provisions of the bill show that the definition was an integral element in the balance which the Senate proposed to make between the interests of the supplementals and of the scheduled-route carriers.[19] In authorizing the Board to issue certificates for individually-ticketed service, the Senate bill provided that these certificates "shall contain such limitations * * * as the Board finds are required to insure that such service will not result in significant diversion of traffic" from any scheduled-route carrier;[20] upon a finding that a supplemental carrier's individually-ticketed service would significantly divert traffic from a regular carrier serving the same two points, the Board was specifically authorized to limit, in the certificate, the number of scheduled flights which the supplemental carrier could make.[21] With respect to the supplementals' charter service (which specifically covered inclusive tours), however, the Board was not authorized to issue certificates containing limitations designed to protect the scheduled carriers. The significance of the Senate bill's

[18] Senate Rep. at 13–14 (Legislative Materials 120b–121b; emphasis added).

[19] See Senate Rep. at 14–15 (Legislative Materials 122b–124b).

[20] S. 1969, 87th Cong., 1st Sess., Section 2 (Legislative Materials 93b).

[21] *Id.* at Section 3 (Legislative Materials 94b–95b).

definition of "charter service," therefore, was not to grant the Board authority which it otherwise would have lacked, but rather to preclude the Board from adopting a broader definition which would have permitted supplementals to maintain individually-ticketed service, "under the guise of charter," without limitations to protect the scheduled carriers.

The bill passed by the House, on the other hand, did not authorize the Board to issue certificates to supplementals for individually-ticketed service on a restricted-schedule basis.[22] "Supplemental air transportation" was defined as "charter trips in air transportation * * * to supplement the scheduled service authorized by certificates of public convenience and necessity issued [to regular route carriers] pursuant to sections 401(d) (1) and (2) of this Act."[23] The House bill contained no definition of "charter trips." The Report of the House Committee on Interstate

[22] See House Rep. at 11–12 (Legislative Materials 42b–45b): "[A]ny air carrier certificated to operate individually ticketed service over a route should be able to do so without CAB-imposed limitations on the frequency of service. If there is room for competition over a route, the CAB has authority in section 401 to certificate additional carriers. If there is not room for such competition, the Board should not be free to avoid the consequences of competition by limiting the volume of service to be provided by one, some, or all of the carriers in the market" (*id.* at 12, Legislative Materials 44b).

[23] H.R. 7318, 87th Cong., 1st Sess., Section 1 (Legislative Materials 18b) (references to the House bill are to the substitute bill (also designated H.R. 7318), prepared and reported out by the House Interstate and Foreign Commerce Committee and passed by the House, which is reprinted at pp. 1–5 of House Rep. (Legislative Materials 17b–30b). H.R. 7318, as introduced, is reprinted at Legislative Materials 7b–11b).

and Foreign Commerce explained this omission as follows:

> The supplementals recommended that a definition of charter be written into the bill and this was given consideration by your committee. The bill passed by the Senate has such a definition.
>
> Your Committee, however, after considering the problem came to the conclusion that under the circumstances, *authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications.*[24]

In place of the Senate bill's language specifically directing the Board to protect the interests of the regular-route carriers, the House bill provided that "Any certificate issued [for supplemental air transportation] * * * shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act." [25]

---

[24] House Rep. at 11 (Legislative Materials 42b; emphasis added in part). No provision of the House bill expressly defines charter or limits the Board's definition. The statement in the Committee Report that the Board's authority to continue to define charter is "*subject to the limitations contained in the reported bill*" appears to refer to the restrictions the Board may include in a certificate for supplemental transportation. See H.R. 7318, 87th Cong., 1st Sess., Section 2 (Legislative Materials 18b), quoted in the text accompanying the following note; *id.* Section 3 (Legislative Materials 19b–20b).

[25] H.R. 7318, 87th Cong., 1st Sess., Section 2 (Legislative Materials 18b).

The bill which emerged from the Conference Committee and which was subsequently enacted by the Congress adopted the provisions of the House bill discussed above.[26] The Conference Committee Report stated that the Senate conferees had agreed to the House version "with respect to the prohibition of individually ticketed and waybilled services on a permanent basis." [27] It offered no explanation for the omission of a definition of "charter" in the compromise bill which followed the House version.[27]

3. It is clear from the foregoing that the Congressional resolution of the conflicting economic interests of the supplementals and the regular carriers contained two basic elements: the Board was precluded from authorizing the supplementals to operate limited-schedule, individually-ticketed service on a permanent basis; [28] and the Board was authorized, as it previously had been, to evolve a definition of "charter" which would effectuate the purposes of the legislation, consistent with preventing the supplementals

[26] See H. Rep. No. 1950, 87th Cong., 2d Sess., pp. 1–2 (Legislative Materials 173b–174b; hereinafter cited as Conference Rep.).

[27] Conference Rep. at 14 (Legislative Materials 200b).

[28] The 1962 amendments permitted two exceptions to the general rule forbidding supplemental carriers to provide individually-ticketed services. Section 9 of Public Law 87–528 provided a two-year period, now expired, during which the Board could authorize such services in order "to permit an orderly transition to an all-charter operation." See Conference Rep. at 7 (Legislative Materials 186b). New Section 417 of the Act (49 U.S.C. 1387) empowers the Board to issue a "special operating authorization" for a period of 30 days, subject to renewal for a maximum of 60 additional days, enabling a supplemental carrier to engage in individually-ticketed operations. Such author-

from operating, under the guise of charter, the type of individually-ticketed service which Congress rejected.

There is plainly no merit in respondents' contention, which the court below apparently adopted, that the failure to include the Senate definition in the bill as finally passed constituted a congressional determination to preclude the Board from authorizing inclusive-tour charters. In the first place, the specific reference to the inclusive-tour concept in the Senate definition was not intended in any way to enlarge the Board's authority; the Committee Report specifically stated that inclusive tours "conform to the traditional concept of charter" and are "a very different sort of service from individually ticketed transportation." [29]

---

ization may be issued only on a finding that "the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service," or that there is a temporary requirement for such service between two points not regularly served by a scheduled carrier. See House Rep. at 12–13 (Legislative Materials 45b–46b).

[29] Senate Rep. at 13–14 (Legislative Materials 120b–121b); see text accompanying note 18, *supra*. Prior to 1966, the Board as a matter of policy, had not authorized inclusive-tour charters, see 14 C.F.R. 207.1 (January 1, 1966), and the Senate Report criticized the "artificial restrictions which have been imposed by Board regulations * * * particularly in international air transportation." Senate Rep., *supra*. The Board had approached the inclusive-tour concept, however, by not requiring prior "affinity" of a group before it could obtain charter transportation. See *Pan American World Airways, Inc., IATA Agreements*, 23 C.A.B. 275, 280–281 (1956); *IATA Agreements, Group Excursion Fares*, 26 C.A.B. 755, 756 (1958). See also *International Airfreight Forwarder Investigation*, 27 C.A.B. 658, 668–669 (1958) (authorizing freight forwarders to charter air-

Second, the elimination of authority for individually-ticketed service in the Conference Committee version of the bill rendered the Senate definition inappropriate. As noted above, the primary purpose of the Senate definition was to delimit the types of supplemental service which could be authorized without restrictions to protect the scheduled carriers. When the provisions for individually-ticketed service were eliminated, the protection of the scheduled carriers rested entirely within the exercise of the Board's authority to issue certificates for charter service.[30] In this context, it is apparent that Congress adopted the House position that "any effort to freeze a definition of charter service into law could well lead to complications."[31] And it is entirely inconsistent with the subsequent floor statements by the advocates of measures to protect the scheduled carriers [32] that the Conference Committee did

craft for transportation of cargoes consolidated from individual shippers).

[30] See Section 401(e)(4) of the Act, 49 U.S.C. 1371(e)(4), which authorizes the Board to issue certificates for supplemental charter transportation which limit the carrier's right to change or add to its schedule; in the Senate bill this authority was limited to certificates permitting individually-ticketed service. See text accompanying notes 19–21, *supra*.

[31] As shown above, see pp. 14–15, *supra*, the Senate bill would have *required* the Board to consider inclusive-tour charters to be within the meaning of the term "charter" as it is applied to both scheduled and supplemental carriers. In the absence of any experience by the Board in regulating inclusive-tour charters, Congress could not foresee what type of abuses this authority might present or whether the Board would be able to correct any abuses by regulation.

[32] See notes 38–40, *infra*, and accompanying text.

not include a definition which would have prohibited inclusive-tour charters.

Finally, it should be emphasized that neither the House Report nor the language of the House bill would have prevented the Board from authorizing inclusive-tour charters.[33] It is no more reasonable to argue that the Congress intended to create this limitation by enacting the House provisions than it would be to argue that the House itself intended that result when it passed its version of the bill.

On several occasions, this Court has indicated that, where resort to legislative history is necessary to resolve apparent ambiguity in a statutory term, the committee reports are the best indicia of Congressional intent.[34] Applying this principle to the statutory provision here in issue, the District of Columbia Circuit has held in two cases that: "Congress intended * * * that the Board should be free to evolve a definition" of charter in accordance with the needs of the air transportation system, so long as it preserves "the distinction between group and individually ticketed travel."[35]

In contrast, the court below based its decision primarily upon statements by certain members of Congress in the floor debates on final enactment of the bill. In so doing, the court demonstrated the wisdom of

---

[33] See text accompanying notes 23–25, *supra*.

[34] *United States* v. *United Automobile Workers*, 352 U.S. 567, 585; *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 474.

[35] *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354; *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939, 949.

the rule, which it cited but did not follow, that the "debate is not entitled to the same weight as 'carefully considered committee reports'" (R. 1142a).[36] The court did not refer to the statement of Senator Monroney, the Chairman of the Senate Commerce Committee, that the charter definition was eliminated by the Conference Committee "because of the decision which had been made on individually ticketed authority." Senator Monroney advised the Senate that this action was intended to give the Board wider latitude in defining charters than it would have had under the Senate provision, because the supplementals were to be confined to charter service.[37] Instead, the court

---

[36] Quoting from *United States* v. *United Automobile Workers*, 352 U.S. 567, 585.

As Mr. Justice Jackson stated in his concurring opinion in *Schwegmann Bros* v. *Calvert Corp.*, 341 U.S. 384, 395–396:

> Resort to legislative history is only justified where the face of the Act is inescapably ambiguous, and then I think we should not go beyond Committee reports, which presumably are well considered and carefully prepared. I cannot deny that I have sometimes offended against that rule. But to select casual statements from floor debates, not always distinguished for candor or accuracy, as a basis for making up our minds what law Congress intended to enact is to substitute ourselves for the Congress in one of its important functions. * * * It is the business of Congress to sum up its own debates in its legislation. Moreover, it is only the words of the bill that have presidential approval, where that approval is given. It is not to be supposed that, in signing a bill, the President endorses the whole Congressional Record. * * *

[37] 108 Cong. Rec. 12283 (Legislative Materials 235b–236b). The legislative history of the 1962 amendments illustrates the type of conflicting interpretations which a court must resolve when it seeks to rely on the floor debates. Senator Monroney specifically stated that the Conference Committee bill, unlike the Senate bill, gave the "Board sufficient flexibility so that it

relied on statements opposing inclusive-tour charters by several members of the Conference Committee (R. 1137a–1142a). Most of these statements, however, are entirely consistent with the House position that there should be no statutory definition of charter, so that the Board would be able to deal effectively with any attempt to use the charter authority, including inclusive tours, as a subterfuge for individually-ticketed service.[38] Only Senators Scott and Cotton took the unequivocal position that the Act precluded the Board from authorizing inclusive-tour charters.[39] But to the extent that any of these statements assert that inclusive-tour charters are prohibited, they contradict both the committee reports and the normal meaning of the statutory language itself. The statements on which the court below relied were an apparent attempt, after all differences had been resolved in conference and the agreement embodied in a compromise bill, to engraft upon the bill a limitation which has no support in the prior legislative history.[40] Since both the Senate

---

might permit split charters" (*ibid.*). Representative Walter, on the other hand, interpreted the Conference bill as prohibiting split charters. 108 Cong. Rec. 12323 (Legislative Materials 232b); see *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (C.A.D.C.), *supra* note 5.

[38] See 108 Cong. Rec. 12324 (Legislative Materials 233b, remarks of Representative Collier).

[39] Senator Cotton was the author of the provision adopted by the Senate Commerce Committee which required the Board to include restrictions in supplemental certificates for the protection of scheduled carriers. See S. Rep. at 15 (Legislative Materials 123b); text accompanying notes 19–21, *supra*.

[40] Compare the identically worded statements delivered by Representative Harris, 108 Cong. Rec. 12323 (Legislative Materials 231b–232b), and by Representative Collier, *supra* note 38.

bill and the House bill as interpreted by the House Report preclude the interpretation which these statements assert, the court below plainly erred in giving dispositive effect to these individual views. As this Court recently observed in *Hardin* v. *Kentucky Utilities Co.*, No. 40, this Term, decided January 16, 1968 (Slip op., p. 10), "the views of those who sought the most restrictive wording cannot control interpretation of the compromise version."

B. THE BOARD'S DEFINITION OF "CHARTER" SERVICE AS COVERING INCLUSIVE TOURS IS REASONABLE AND SHOULD BE UPHELD BY THE COURTS

As this Court has often decided, the meaning given a statutory term by the agency charged with its enforcement will be respected by the courts if it is fairly comprehended by the language and purpose of the statute, even though another interpretation might also be reasonable. See, *e.g.*, *Udall* v. *Tallman*, 380 U.S. 1, 16; *National Labor Relations Board* v. *Coca-Cola Bottling Co.*, 350 U.S. 264; *Gray* v. *Powell*, 314 U.S. 402, 411–413. In *Hardin* v. *Kentucky Utilities Co.*, *supra*, the Court reaffirmed this rule, stating that the agency determination "is entitled to acceptance unless it lies outside the range of permissible choices contemplated by the statute" (Slip op., p. 7); accordingly, the courts should take the agency determination "as their starting point and * * * set this determinaion aside only when it lacks reasonable support in relation to the statutory purpose" (Slip op., p. 8). Deference to the Board's interpretation is particularly appropriate in the present case because the orders here on review represent the initial stages of the Board's efforts to enforce a new

regulatory scheme which embodies a new concept of all-charter operations for the supplemental air carrier industry. Cf. *Power Reactor Co.* v. *Union of Electrical Workers*, 367 U.S. 396, 408.

1. The Board's interpretation of charter is consistent with the established meaning of that term in surface transportation. In the leading case of *Tauck Tours, Inc.*,[41] the Interstate Commerce Commission held that a travel agent offering all expense tours to the general public was authorized to charter buses from motor carriers licensed to engage only in charter services and was not limited to the use of carriers licensed to provide individually-ticketed service. In answering the contention that the all-expense tours were a subterfuge for individually-ticketed transportation, the Commission stated that the participants in such tours

> have more than just a mere desire to travel between the same points. They are participants in a group which will maintain its identity for some predetermined period of time, be under the direction of a guide, and enjoy substantially identical accommodations and experiences. * * * [B]y agreeing to become group members for the sake of the group advantages, [they] achieve a degree of cohesiveness such that, even though the group was organized by [a travel agent], it is entitled * * * to deal with the carriers as a group and to buy charter service for the group from the carriers * * *."[42]

[41] *Tauck Tours, Inc., Extension—New York, N.Y.*, 52 M.C.C. 373 (1951).

[42] *Id.* at 376.

A three-judge district court affirmed the Commission's conclusion, stating that "a good deal more than bare individual transportation is involved. The tour is attractive because it is a group adventure * * *. The important thing is that the Tauck group is a cohesive whole interested in a tour for pleasure, and not in mere transportation."[43] This Court affirmed *per curiam*, 352 U.S. 1020.

The court below found this precedent "not at all persuasive" on the ground that "the Motor Carrier Act is quite different from the Federal Aviation Act in language, statutory structure and legislative history" (R. 1142a). This misses the mark, however. The question is not whether the term charter in the Federal Aviation Act must be given the same construction applied to the Motor Carrier Act, but whether Congress intended to preclude the Board, in the exercise of its regulatory authority, from interpreting "charter" in air transportation in accord with its established meaning in surface transportation. The legislative history of the 1962 amendments persuasively demonstrates that the authorization of inclusive tours as charters was contemplated by the Congress, and as discussed above, there is nothing in that history which shows a Congressional determination to deny the Board this authority. In the absence of an unambiguous expression of congressional intent to adopt a unique definition of charter in air transportation, the courts should respect the Board's determination that the applica-

[43] *National Bus Traffic Ass'n* v. *United States*, 143 F. Supp. 689, 696–697 (D. N.J.).

tion of that term's established meaning in surface transportation would best serve the policies of the Act.

2. The inclusive-tour authorizations effectuate the overall purpose of the 1962 amendments, which was to establish a stable and viable role for the supplemental carriers in the air transportation system. Congress intended to strengthen the economic position of the supplemental carriers because of the public importance of their civilian and military operations and because of the relationship between economic stability and air safety. See *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939, 945 (C.A.D.C.). In view of the fact that the supplementals may be authorized to perform only charter services, the Board properly determined that the scope of this authority should be broad enough to assure that these carriers can continue to meet the needs of the public. The Board agreed with the examiner's finding that authorization for inclusive-tour charters would "lend economic strength to the supplemental carriers * * * by making available needed additional sources of civil revenues" (R. 140a), and it added (R. 553a):

> These carriers have proved to be an essential factor in our national defense civil augmentation airlift system, making substantial contributions in time of national crisis. The United States thus has a sizeable stake in their continued survival and viability. Inclusive tour authority will make a contribution to that continued viability. * * *

The additional revenues which the supplementals will derive from inclusive-tour charters is especially significant at the present time. Their principal source

of revenue in the past has been military charters. As the examiner pointed out, however (R. 75a), under a new Defense Department commercial airlift policy instituted in 1966, only those carriers receiving at least 30 percent of their air transportation revenues from commercial sources will be awarded military contracts, and it is anticipated that the required percentage of revenue from commercial sources will reach 60 percent. If the supplementals are not permitted to enlarge their civilian services, they may be unable to retain the mainstay of their charter operations, and it is unlikely that they would be able to purchase costly new aircraft to attract civilian passengers.

Furthermore, the inclusive-tour charter is an example of the creative role which the supplementals can play in the air transportation system. The Board limited the inclusive-tour authorization for an experimental five-year period, during which it can determine the effect which this type of service has on the economic growth of the industry as a whole. It is likely, as the examiner found (R. 119a–123a), that inclusive tours will generate new traffic because they would appeal especially to the low-income, first-time travelers who would, because of their inexperience, prefer to leave all of the complicated details in the hands of an experienced tour operator.

3. The regulations adopted by the Board to govern inclusive-tour charter operations give effect to another important purpose of the 1962 amendments—to prevent the supplementals from offering individually-ticketed, point-to-point service in competition with

the scheduled carriers.[44] In view of its holding that Congress did not give the Board power to authorize inclusive tours, the court below asserted that it need not consider the effect of the regulations. We submit that the court's approach was far too narrow. Given its most restrictive interpretation, the legislative history of the statute fairly suggests only that the Board's power to evolve a definition of charter is limited by the requirement that it "preserve the distinction between group and individually ticketed travel."[45] Without examination of the particular type of service which the Board authorized and its relationship to the service offered by the scheduled carriers, a court cannot properly determine whether this distinction has been maintained.

The Board's regulations, which were made specific conditions of the certificates involved in this case, "should obviate any inducement to substitute travel on inclusive tours for point-to-point transportation" (R. 352a). These regulations specifically require, *inter alia:* (1) that the tour price cannot be less than 110% of the lowest available individual fare offered by a scheduled carrier for transportation over the same route, and must include at least all hotel accommodations and air or surface transportation between all places on the itinerary; (2) that every tour must be performed on a round-trip basis, lasting at least seven days, with a minimum of three overnight stops

[44] See *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939, 945, 947–948 (C.A.D.C.).

[45] *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354 (C.A.D.C.).

(each stop to be at least 50 miles apart); (3) that every tour must be operated by a regulated tour operator pursuant to prior approval by the Board of the tour prospectus (including review of the operator's qualifications and financial condition, the itinerary, and the tour price and related costs); and (4) that each scheduled carrier serving the points involved in the tour be given notice of the application and an opportunity to object (14 C.F.R. 378.2, 378.10–378.15).

It would be unreasonable to assume that an individual desiring nothing more than point-to-point transportation would pay 110 percent of the lowest individually-ticketed fare, a price which includes hotel accommodations, merely to part company with the group and seek out other accommodations for which he would also have to pay. Similarly, such a person would be unlikely to participate in a trip requiring him to visit two other places and remain for at least seven days. As the Board pointed out (R. 344a):

> In exchange for realizing the price savings accruing from the economies of planeload charter operations, the charter tour passenger is subjected to the rigidities of a group itinerary, must be willing to travel and share facilities with strangers, and must agree to the necessary regimentation that is entailed in group travel. Nor will he have the freedom to select from the multiple daily schedules offered by route carriers, but will be confined to predetermined departure and arrival times selected by the tour operator.

The participants in an inclusive tour, under the Board's regulations, will manifestly be undergoing an

experience in group travel as a "cohesive unit" which will "qualify as charter * * * under the Act" (R. 350a).

II. THE PROCEDURAL ISSUES RAISED BY RESPONDENTS BELOW, BUT NOT DECIDED, ARE WITHOUT MERIT, AND THIS COURT SHOULD DISPOSE OF THEM WITHOUT REMANDING FOR FURTHER PROCEEDINGS

In view of its holding that the Board did not have statutory power to authorize inclusive-tour charters, the court below did not reach respondents' contention that the orders were invalid by reason of certain procedural defects. If this Court holds that the court below erred in its interpretation of the statute, we urge the Court to rule on the remaining issues in the case without remanding to the court of appeals for further proceedings.[46] A final disposition of the case at this stage is in the public interest, because the inclusive-tour authority bears importantly on the competitive strength of the supplemental carriers involved and may generate increased foreign travel to the United States (R. 550a–552a).

Respondents' procedural contentions relate only to the six certificates issued in the *Reopened Transatlantic Charter Investigation*. In the court below respondents contended that the orders were invalid for the following reasons: (1) under this Court's decision in *Civil Aeronautics Board* v. *Delta Air Lines, Inc.*, 367

[46] See, *e.g.*, *Chicago & N.W.R. Co.* v. *Atchison, T. & S.F. R. Co.*, 387 U.S. 326, 351–356; *Levin* v. *Mississippi River Fuel Corp.*, 386 U.S. 162, 170; *Accardi* v. *Pennsylvania R. Co.*, 383 U.S. 225, 232–233; *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 621.

U.S. 316, further hearings were required with respect to the award of inclusive-tour authority to two carriers (Capitol Airways and Saturn Airways) because it was granted in the form of amendments to their previously issued certificates; (2) the record was stale and should have been reopened for further evidence; and (3) the awards rested upon officially-noticed data which respondents were given no opportunity to rebut.[47] The Board argued that these contentions were not subject to review under the doctrine of *Chicago & S. Air Lines* v. *Waterman Steamship Corp.*, 333 U.S. 103, because the orders had been approved by the President pursuant to 49 U.S.C. 1461.[48] The *Waterman* doctrine, however, raises a jurisdic-

[47] In addition, respondents contended that the Board's recommendation to the President was void because it was entered by a 2–1 vote of the 5-member Board. We assume that this contention has been abandoned, in view of the decision of this Court in *Federal Trade Commission* v. *Flotill Products, Inc.*, 389 U.S. 179. Moreover, the Federal Aviation Act specifically provides that "three of the members shall constitute a quorum of the Board" (49 U.S.C. 1321(c)).

[48] The Board also urged below that the issue discussed in point I, *supra*—the Board's power to authorize inclusive-tour charters—was not reviewable. This contention, however, was not based upon *Waterman* but on the ground that the Board's authority had already been litigated and resolved in the domestic inclusive tour case to which respondents were parties. *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939 (C.A.D.C.). Under constructions of *Waterman* adopted by the lower courts without objection by the government, the Board's power to enter an order—as distinguished from procedural errors in the process of entering it—is reviewable by the courts even if that order is subject to Presidential approval. *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (C.A.D.C.). See *Pan American World Airways, Inc.* v. *Civil Aeronautics Board*, C.A.D.C., Nos. 20,360 and 21,149 (decided January 31, 1968).

tional question of constitutional dimensions. Because respondents' procedural contentions are so clearly without merit, we submit that the Court need not reach the *Waterman* issue, and that it should rule on the merits of these contentions. See, *e.g., Rabinowitz* v. *Kennedy,* 376 U.S. 605, 607; *Secretary of Agriculture* v. *Central Roig Refining Co.,* 338 U.S. 604, 619–620; *Brooks* v. *Dewar,* 313 U.S. 354, 359–360.

1. Respondents' contention that *Delta Air Lines* required further hearings in the awards of inclusive-tour authority to Capitol and Saturn was raised for the first time in the court of appeals and is therefore barred under 49 U.S.C. 1486(e), which precludes judicial review of any objection which a party has not first raised before the Board. In all events, further hearings were not required. In *Delta Air Lines,* this Court held that the Board, on a petition for reconsideration, could not withdraw a certificate which had become effective without conducting further hearings under 49 U.S.C. 1371(g), which requires such hearings when an effective certificate is modified or amended.

The history of the *Transatlantic Charter Investigation,* however, shows that the present case involves the postponed granting of a continuing application and does not affect the security of rights conferred on a carrier by its certificate, which was the issue in *Delta Air Lines.* After full litigation of the inclusive-tour issue, the Board issued an order in 1963 awarding transatlantic charter certificates to three supplemental carriers, but withheld inclusive-tour authority because it found the transatlantic operations of the scheduled carriers were still financially insecure and that inclu-

sive-tour authority for the supplementals would "increase the diversion" from the regular carriers "to a degree not warranted by the attendant benefits of allowing such charters *at the present time*" (R. 861a, emphasis added).

The President approved the Board's decision to award certificates to Saturn and Capitol (two of the three carriers then involved) (R. 777a), but did not dispose of the Board's recommendation that the applications for inclusive-tour authority should not be granted at that time; for this reason the Board "treated as premature, requests for reconsideration of its denial of all-expense tour authority" (R. 961a). In September 1965, the Board reopened the *Transatlantic* case to reexamine the question of inclusive-tour authority (R. 960a–962a). At the Board's invitation to discuss the adequacy of the record, respondents argued that the record was unduly stale (R. 963a, 968a). They did not suggest, however, that further hearings as to Capitol and Saturn would be required under 49 U.S.C. 1371(g).

In the *Transatlantic* order here on review, the Board rejected respondents' contention of staleness. On examination of the earlier record and of respondents' reports of the financial and operational results for the years subsequent to 1963, the Board found that their strength and resources for continuing transatlantic service could no longer be questioned, and accordingly, that its earlier grounds for denying inclusive-tour authority to the supplementals had disappeared (R. 1067a). With the approval of the President, the Board awarded inclusive-tour authority to

Capitol and Saturn (R. 1077a), and subsequently, to four other supplemental carriers (R. 1105a).

The foregoing history demonstrates that the award of inclusive-tour authority to Saturn and Capitol was not so much a modification of their outstanding certificates as it was a disposition of pending applications by all six supplementals. The certificates of Capitol and Saturn were only partial grants; their applications for inclusive-tour authority had been neither granted nor denied. Since the other supplementals had not previously received transatlantic certificates, their inclusive-tour authority was expressed in a wholly new certification. Whether the newly granted authority was expressed as an amendment or as a new certificate was, in these circumstances, a matter of form not substance. In all events, the award was made on the basis of full hearings in which the inclusive-tour issue had been thoroughly explored; this satisfies the requirements of 49 U.S.C. 1371(g).

2. The adequacy of the already lengthy record was plainly a matter committed to the agency's discretion (see *Interstate Commerce Commission* v. *City of Jersey City*, 322 U.S. 503; *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U.S. 515). Upon consideration of the previous hearings and the parties' submissions, the Board determined that there was no additional factual matter bearing on the issues which was not already available to it. Its decision was certainly not unreasonable.

3. The principal matters officially noticed were respondents' own reports of their financial and operating results for the years subsequent to 1963. The

Board's regulations specifically provide that it may consider data contained in reports of carriers which have been publicly filed up to the time of decision (14 C.F.R. 302.24(m)). Respondents had the right to an opportunity to rebut the matters of which the Board took official notice (5 U.S.C. (Supp. II) 556(e)), but they never made such a request of the Board nor have they specified what, if any, additional factual showing they intended to make. It was on the basis of respondents' own reports that the Board concluded that "the basic financial and operational soundness of Pan American and TWA may no longer be questioned" (R. 1067a). We do not understand respondents to suggest that their reports are inaccurate. They suffered no prejudice from official notice of such matters. *Civil Aeronautics Board* v. *State Airlines, Inc.*, 338 U.S. 572; *United States* v. *Pierce Auto Freight Lines, Inc.*, *supra*.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed and the cause should be remanded with directions to affirm the Board's orders.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
DONALD F. TURNER,
Assistant Attorney General.
FRANK M. WOZENCRAFT,
Assistant Attorney General.
JOSEPH J. CONNOLLY,
Assistant to the Solicitor General.
HOWARD E. SHAPIRO,
Attorney.

JOSEPH B. GOLDMAN,
General Counsel,
O. D. OZMENT,
Deputy General Counsel,
WARREN L. SHARFMAN,
Associate General Counsel,
Litigation and Legislation,
ROBERT L. TOOMEY,
Attorney,
Civil Aeronautics Board.

MARCH 1968.

APPENDIX

Statute Involved

Relevant provisions of the Federal Aviation Act, 72 Stat. 731, as amended, 49 U.S.C. 1301 *et seq.*:

TITLE I—GENERAL PROVISIONS

Definitions

SEC. 101 [72 Stat. 737, as amended by 75 Stat. 467, 76 Stat. 143, 49 U.S.C. 1301] as used in this Act, unless the context otherwise requires—

* * * * * *

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

* * * * * *

(32) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(33) "Supplemental air transportation" means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act.

* * * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Certificate Required

Sec. 401. [72 Stat. 754, as amended by 76 Stat. 143, 49 U.S.C. 1371] (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

* * * * *

Issuance of Certificate

(d)(1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such

periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

* * * * *

TITLE VIII—OTHER ADMINISTRATIVE AGENCIES

THE PRESIDENT OF THE UNITED STATES

Sec. 801. [72 Stat. 782, 49 U.S.C. 1461] The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

* * * * *

TITLE X—PROCEDURE

* * * * *

JUDICAL REVIEW OF ORDERS

Orders of Board and Administrator Subject to Review

Sec. 1006. [72 Stat. 795, as amended by 74 Stat. 255, 75 Stat. 497, 49 U.S.C. 1486] (a)

Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

U.S. GOVERNMENT PRINTING OFFICE: 1958

LIBRARY
SUPREME COURT, U. S.

No. 969

(Consolidated with Nos. 800 and 965)

FILED
MAR 14 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
Petitioner,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR PETITIONER, THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

CHARLES A. HOBBS,
Counsel for Petitioner,
The American Society of Travel Agents
1616 H Street, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
GLEN A. WILKINSON
PAUL S. QUINN
Of Counsel

WILSON - ERIE PRINTING CO. - RE 7-8002 - WASHINGTON, D. C. 20001

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	3
STATUTE INVOLVED	3
STATEMENT	3
Introduction	3
Background to the 1962 Act	5
The Hearings and Reports Preceding the 1962 Act	7
The Transatlantic Charter Investigation	12
The Conference Committee Report	13
Further Proceedings Before the CAB	15
The Judicial Reviews	17
SUMMARY OF ARGUMENT	18
ARGUMENT	20
I. The Floor Speeches Did Not Restrict the Board's Pre-existing Authority to Allow Inclusive Tour Charters	20
1. To Allow the Speeches to Control the Meaning of the Act is Contrary to Common Sense	20
2. To Allow These Speeches to Control The Meaning of The Act is Contrary to Established Rules of Statutory Construction	24
3. To Allow These Speeches to Control the Meaning of the Act is to Honor the Error on Which They Were Based	25
II. Inclusive Tour Charters Are Consistent With the Policy of the 1962 Act	26
1. The Findings in This Case	26
2. The British Experience With ITCs	28
3. The ICC Experience with ITCs	30

Page

CONCLUSION ____ 31

ATTACHMENT A—Fifth Report of Air Transport Licensing Board (1965) ____ 33

TABLE OF CITATIONS

Cases:

American Airlines v. *CAB*, 98 U.S.App.D.C. 248, 235 F.2d 845 (1956), *cert. den.*, 353 U.S. 905 [Exemption case] ____ 5, 6, 23

American Airlines v. *CAB*, 365 F.2d 939 (D.C. Cir. 1966) [ITC case] ____ 1, 17, 23, 24

Duplex Co. v. *Deering*, 254 U.S. 443 (1920) ____ 24

Greyhound Corp. v. *Edwards*, 96 M.C.C. 112, *affirmed*, 100 M.C.C. 453 (1966) ____ 30

Hardin v. *Kentucky Utilities Co.*, 390 U.S. 1 (1968) ____ 26

NLRB v. *Hearst Publications*, 322 U.S. 111 (1944) ____ 26

Pan American World Airways v. *CAB*, 380 F.2d 770 (2d Cir. 1967) ____ 1, 17

Tauck Tours Inc. Extension, 52 M.C.C. 373 (1951), *affirmed by full Commission*, 63 M.C.C. 493, *affirmed sub nom. National Bus Traffic Assn.* v. *United States*, 143 F.Supp. 689 (D.N.J. 1956), *affirmed*, 352 U.S. 1020 ____ 30

United Air Lines v. *CAB*, 108 U.S.App.D.C. 1, 278 F.2d 446 (1960), *vacated*, 364 U.S. 297 ____ 7, 23

United States v. *Wright Wood Dairy Co.*, 315 U.S. 110 (1942) ____ 24

Statutes:

Federal Aviation Act of 1958, 72 Stat. 731, 49 U.S.C. § 1301 ____ 3, 6, 15, 16, 20, 25

1962 Amendment to Federal Aviation Act, 76 Stat. 443 ____ 3, 15

Civil Aeronautics Act of 1938, 52 Stat. 987 ____ 6

Page

Legislative History of 1962 Act:

S. 1543, 86th Cong. 2d Sess. (1960) ——— 7
H.R. 7593, 86th Cong. 2d Sess. (1960) ——— 7
S. 1969, 87th Cong. 1st Sess. (1961) ——— 7, 8
H.R. 7318, 87th Cong. 1st Sess. (1961) ——— 7, 8
H.R. 7512, 87th Cong. 1st Sess. (1961) ——— 8
Hearings before Subcommittee of House Interstate and Foreign Commerce Committee, 87th Cong. 1st Sess. (1961) ——— 8, 10, 21
Hearings before Aviation Subcommittee of Senate Commerce Committee, 87th Cong. 1st Sess. (1961) ——— 8, 9, 10, 20, 21
S. Rept. 688, 87th Cong. 1st Sess. (1961) ——— 10, 11
H. Rept. 1177, 87th Cong. 1st Sess. (1961) ——— 5, 6, 7, 8, 11, 24
Conf. Rept. (H. Rept. 1950), 87th Cong. 2d Sess. (1962) ——— 13
108 Cong. Rec. (June 29, 1962) ——— 13, 14, 15, 22, 23

CAB Regulations:

14 C.F.R. Part 207 (Domestic Charters by Scheduled Carriers) ——— 8, 11, 21
14 C.F.R. Part 208 (Charters by Supplemental Carriers, except Transatlantic) ——— 4
14 C.F.R. Part 295 (Charters by Supplemental Carriers, Transatlantic) ——— 9, 12, 21
14 C.F.R. Part 296 (Charters to Airfreight Forwarders) ——— 4
14 C.F.R. Part 378 (Inclusive Tour Charters by Supplemental Carriers and Tour Operators) ——— 4, 5, 9, 17, 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 969

(Consolidated with Nos. 800 and 946)

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
Petitioner,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR PETITIONER, THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

Opinions Below

The opinion of the court below dealing with the inclusive tour charter concept (foreign phase), *Pan American World Airways* v. *CAB*, is reported at 380 F.2d 770, and reprinted in the Appendix at p. 1119a. The opinion of the U.S. Court of Appeals for the District of Columbia Circuit dealing with the inclusive tour charter concept (domestic phase), *American Airlines* v. *CAB*, is reported at 365 F.2d 939. The opinions of the Civil Aeronautics Board

and of the Examiners are reprinted in the Appendix as follows: [1]

Transatlantic Charter Investigation,
CAB Docket 11908

654a Recommended Decision of Examiner James S. Keith, September 21, 1962. Inclusive tour charters covered at 684a-685a, 711a-714a, 716a-718a, 728a-729a, 734a-736a, 751a.

826a Opinion of Board Affirming Examiner Keith, October 8, 1963, ITCs covered at 857a-859a, 861a.

1060a Opinion of Board Reconsidering ITC Question, March 11, 1966 (published September 30, 1966). ITCs covered at 1063a-1078a (majority) and 1078a-1080a (dissent).

Supplemental Air Service Proceeding,
CAB Docket 13795

44a Recommended Decision of Examiner Robert L. Park, August 27, 1965. ITCs covered at 100a-124a, 129a-136a.

332a Opinion of Board in Domestic Phase, March 11, 1966. ITCs covered at 336a-355a (majority) and 365a-384a (dissent).

517a Same, opinion on reconsideration, April 29, 1966. ITCs covered at 524a-528a.

543a Opinion of Board in Overseas/Foreign Phase, March 11, 1966 (published September 30, 1966). ITCs covered at 548a-553a (majority) and 560a-561a (dissent).

Jurisdiction

The judgment of the court below was entered July 20, 1967, and rehearing was denied September 29, 1967. This Court granted certiorari on January 29, 1968. Jurisdic-

[1] Herein, "App." means page references in the printed appendix, and "Tr." means page references in the original record which is in the custody of the Board.

tion is invoked under 49 U.S.C. § 1486(f) and 28 U.S.C. § 1254(1).

Question Presented

Whether the Civil Aeronautics Board has the authority to allow supplemental carriers, who are restricted to charter operations only, to operate a type of charter called "inclusive tour charter," which is a charter to a tour operator for the purpose of transporting an inclusive tour group assembled by the tour operator.

Statute Involved

The Federal Aviation Act of 1958, 72 Stat. 731, as amended by the Act of July 10, 1962, 76 Stat. 143, 49 U.S.C. §§ 1301 et seq. The 1962 Act is reprinted in full in the Appendix at pp. 173b-191b.

STATEMENT

Introduction

The American Society of Travel Agents, Inc. (ASTA), is the major association of travel agents, whose members operate more than 2,600 travel agencies throughout the United States and Canada. Among its members are most of the major tour operators, who are the principals in the typical inclusive tour charter arrangement.[2] ASTA has been a party in this case since 1961, and has supported the inclusive tour charter concept, in the belief that the concept will generate new travel, without serious diversion from existing travel.

There are approximately 6,000 travel agents in the United States, who promote and sell from 75% to 90% of all international air transportation originating in this country, and 32% of domestic air passenger sales amounting to approximately $1 billion annually. The U.S. scheduled carriers, three of whom are respondents here,

[2] App. 102a, 118a.

consist of eleven trunk carriers plus Pan American (which provides no domestic service), thirteen local service carriers, several carriers serving Hawaii and Alaska, and various helicopter carriers.

There are currently thirteen supplemental air carriers certificated by the Civil Aeronautics Board pursuant to the 1962 Act, six of whom are petitioners in No. 800.

Scheduled carriers are authorized to carry passengers on an individually ticketed or charter basis. Supplemental carriers may carry passengers only on a charter basis.

The principal types of "charter" which supplemental carriers may operate, as presently defined by the Civil Aeronautics Board, are *"military charter,"* i.e. charters to the Department of Defense for transportation of troops, recruits, etc., 14 C.F.R. 208.3(s)(1); *"single entity"* charter, as where a college charters and pays for a plane to transport its football team, 14 C.F.R. 208.3(i); *"pro-rata"* (or "affinity") charter, as where a club charters a plane for a vacation to Europe, each passenger paying his pro-rata share, 14 C.F.R. 208.3(h); *"airfreight"* charter, where an airfreight forwarder assembles small units and uses the charter to ship them as a consolidated unit, 14 C.F.R. 296.2(a); and *"inclusive tour"* charter, 14 C.F.R. 378, which is the subject of this case.

An *inclusive tour* is a vacation tour wherein all the basic elements—transportation, hotels, meals, sightseeing, etc.—are included in a single lump sum tour price.[2] An *inclusive tour charter* (herein sometimes called ITC for convenience and in accord with industry practice) is a charter by a carrier to a tour operator, who uses the aircraft space to transport a group of inclusive tourists assembled by him.

In the context of this case, inclusive tour charter has a more special meaning—it means an inclusive tour charter (a) where the aircraft is furnished by a supplemental

[2] Inclusive tours are also sometimes called all-expense tours or package tours.

air carrier, (b) where the tour operator's qualifications are approved by the Civil Aeronautics Board, and (c) where the details of the tour satisfy the comprehensive rules of the Board.[4] The main purpose of the rules is to discourage diversion from the scheduled carriers. For example, the inclusive tour price paid by the tourist must be 10% greater than the scheduled carrier fares for the same itinerary, and the tour must last at least seven days, and include overnight stops in at least three different places.[5]

According to a recent CAB press release, a total of 153 of such inclusive tour charters were operated in 1967, and indications are that 1968 results will be "at least double" that.[6]

Background to the 1962 Act

The recognized status of the supplemental carriers (formerly called irregular or nonscheduled carriers) may be said to have begun on November 15, 1955, when the Civil Aeronautics Board formally recognized them as a class of carriers distinct from the certificated route carriers, and found that their operations were in the public interest and would not adversely affect the scheduled carriers.[7] The Board granted the supplementals authority to fly as many charters as they wished, to any place, together with authority to fly individually ticketed flights not to exceed 10 flights per month in each direction between any two points.[8] The individually ticketed authority could be used on a regularly scheduled basis.[9]

---

[4] 14 C.F.R. Part 378 (App. 411a).

[5] 14 C.F.R. § 378.2(b).

[6] CAB 68-8, February 12, 1968. The Board has just granted one tour operator alone authority to perform 245 inclusive tours to Hawaii between May 1968 and May 1969. CAB Release 68-33, March 12, 1968.

[7] H.Rept. 1177, 87th Cong. 1st Sess. 8 (1961), App. 36b-37b.

[8] Id.

[9] *American Airlines* v. *CAB*, 98 U.S. App. D.C. 348, 235 F.2d 845 (1956), *cert. den.*, 353 U.S. 905, at p. 848.

At that time, as now, the Civil Aeronautics Act required carriers to have certificates of public convenience and necessity,[10] but then as now, permitted certain carriers or classes of carriers to be exempted from the requirements of the Act upon a finding that compliance with such requirements— [11]

> ". . . would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operation of such air carrier or class of carriers. . . ."

In order to satisfy the requirements of the Act, in lieu of certificates the Board granted blanket exemptions to a number of supplemental carriers, and made the required findings of undue burden.[12]

The scheduled carriers appealed to the U.S. Court of Appeals for the District of Columbia Circuit, which held that the individually ticketed authority granted to the supplementals by the Board, by way of exemption rather than certificate, brought the supplementals' operations "much closer to the certificated services." [13] The court was unable to see why certification of the supplementals, as opposed to exemption authority, would be an "undue burden" on them; [14] and remanded for further findings on the point.

On January 28, 1959, the Board granted temporary certificates to a number of supplemental carriers, continuing the authority to conduct unlimited charter flights, and individually ticketed service not to exceed 10 flights per month in each direction between any two points.[15]

---

[10] 52 Stat. 987 (1938), 49 U.S.C. 481(a), now Sec. 401 of the Federal Aviation Act, 72 Stat. 754 (1958), 49 U.S.C. § 1371.

[11] 49 U.S.C. § 496(b) (1938 Act); 49 U.S.C. § 1386(b) (1958 Act).

[12] *American Airlines* (1956), note 9 above, at p. 848.

[13] Id. at 853.

[14] Id.

[15] H.Rept. 1177 at p. 9, App. 37b-38b.

Again the scheduled carriers appealed, and again the court found the Board's action legally insufficient,[16] because (1) the certificates failed to specify the points between which service was to be provided, contrary to the requirements of the Federal Aviation Act; [17] (2) the certificates contained a limitation of 10 flights per month, contrary to the Act, which prohibits any restriction on the carrier's right to set the frequency of its schedules; [18] and (3) even the smallest carriers were found "fit" to provide the broad, nationwide service described in the certificates. The Court said that if the requirements of the Act [19]

> ". . . interpose an insuperable obstacle to the full development of supplemental air service, which they may well do, the problem is for the Congress. The Board should present it there."

Accordingly, the Board submitted to Congress proposed legislation, which was introduced in 1960 as S.1543 and H.R.7593.[20] Hearings were held in May, 1960, but it was decided that time was too short to properly consider the issues, and a temporary bill was enacted to maintain the status quo and permit further consideration in the next Congress.[21]

The Hearings and Reports Preceding the 1962 Act

On May 25, 1961, the Board's bills were reintroduced as S.1969 and H.R.7318.[22] These bills would have authorized the Board to issue certificates without specifying

---

[16] *United Air Lines* v. *CAB*, 108 U.S.App.D.C. 1, 278 F.2d 446 (1960), vacated, 364 U.S. 297.

[17] 49 U.S.C. § 1371(e)(1).

[18] 49 U.S.C. § 1371(e)(4).

[19] *United Air Lines*, note 16 above, at p. 449.

[20] 86th Cong. 2d Sess.

[21] H.Rept. 1177 at p. 9, App. 39b.

[22] 87th Cong. 1st Sess., reprinted at App. 1b and 7b.

the terminal and intermediate points, and with such limitations as to frequency of service, size or type of equipment, or otherwise, as would assure that the service so authorized remained supplemental to the service of the certificated route carriers.[23] Hearings were promptly held, on June 20, 21 and 23, 1961, in the House,[24] and on June 26, 29 and 30 in the Senate.[25]

The Board's bills did not emphasize a charter role for the supplementals, but merely defined "supplemental air transportation" as air transportation rendered pursuant to a certificate containing limitations to insure that the service was in fact supplemental to the service of the route carriers.[26] The term "charter" was not defined, or even mentioned.

The bill supported by the supplementals, on the other hand, authorized "unlimited charter operations," and defined charter to mean merely any agreement for the use of the entire capacity of an aircraft.[27] It also expressly authorized individually ticketed operations to the extent of 192 flights per year (or an average of 16 flights per month).[28]

At that time, the CAB regulations contained a blanket prohibition on charters to travel agents[29] (and still do,

---

[23] Thus characterized in H.Rept. 1177 at p. 11, App. 42b.

[24] Hearings before Subcommittee of House Interstate and Foreign Commerce Committee, 87th Cong., 1st Sess. (1961) (herein called *House Hearings*). Some portions are reprinted at App. 207b.

[25] Hearings before Aviation Subcommittee of Senate Commerce Committee, 87th Cong. 1st Sess. (1961) (herein called *Senate Hearings*). Some portions are reprinted at App. 217b.

[26] S.1969 and H.R.7318, Sec. 1, App. 1b and 7b.

[27] H.R.7512, 87th Cong. 1st Sess., App. 13b.

[28] Id.

[29] 14 C.F.R. 207.1, which is still in effect (though no longer applicable to supplemental carriers) defines charter to mean engagement of the entire capacity of an aircraft, "(2) By a person *(no part*

[Footnote continued on page 9]

except for inclusive tour charters) arising from some undesirable experiences with promoters selling point-to-point transportation to individual members of the public, and using so-called "charters" to carry them.[30] The inclusive tour charter concept, whereby a tour operator sells tours utilizing the charter for the to-and-from transportation element of the tour, was not then known in the air travel industry in this country.

A witness for the scheduled carriers opposed "unlimited" charters on the assumption that this would bring back the alleged evils that led to the original ban on charters to travel agents:[31]

> "Now, if your scheduled airlines are going to assume, as they are required to under the Act, the obligation to provide this service day in and day out at the fares and their tariffs, which remain the same throughout the full year, there has to be some protection in there against another operator coming in under the guise of charter and simply running a full passenger load any day he is able to get a full passenger load."

He added,[32]

> "This is actually individually ticketed service under the guise of charter. It is one of the problems in the field."

---

of whose business is the formation of groups for transportation or the solicitation of sale of transportation services) for the transportation of a group of persons as agent or representative of such group." (Emphasis added.)

Part 295, governing transatlantic charters by supplemental carriers (except inclusive tour charters, which are covered by Part 378), had a similar prohibition. See App. 901a, where Sec. 295.2(b)(1)(ii) is set forth substantially as it was in 1961.

[30] See *Senate Hearings*, p. 268; App. 219b.

[31] *Senate Hearings*, p. 266. Even CAB Chairman Boyd initially made a similar assumption. *Senate Hearings*, p. 36.

[32] Id. p. 268.

He added,[33]

> "Now, part of my point there is that because of the complexity of the problems that are involved, this is an area in which I believe there has to be a certain amount of flexibility for the administrative agency to promulgate regulations and to change them from time to time. You have a great deal of risk, if you attempt to adopt one definition to last forever, covering all of the various phases of the problem, that you discover that you just did it wrong."

After the hearings, the scheduled carriers submitted a statement to the House, directed to the proposed definition of charter in the bill supported by the supplementals, H.R.7512. The statement closed with the following:[34]

> "The basic guideline being this clear, an appropriate function of the Board is to prescribe regulations, as needed from time to time, to prevent abuses through ticket agents, solicitation of the general public, or other devices for conducting individually ticketed operations under the guise of 'charter'. There is a substantial danger that an attempt by the Congress to spell out, in full detail, the limits of 'charter' would import an unnecessary rigidity into the field, thus hampering ability of the Board to deal with changing circumstances, as well as entailing extremely detailed legislation.
>
> "For such reasons, our view is that there is no present need for the Congress to undertake a detailed definition of 'charter' in the Federal Aviation Act."

The Senate Committee reported a substantially revised S.1969 on August 8, 1961.[35] As revised, it allowed individually ticketed operations under such limitations as the

---

[33] Id. p. 270.

[34] *House Hearings*, p. 243. The same statement was submitted to the Senate, *Senate Hearings*, p. 278.

[35] S.Rept. 688, 87th Cong. 1st Sess. (1961), App. 91b. The Senate version of the bill appears at App. 92b-103b.

Board might find necessary to prevent undue diversion from the route carriers. Contrary to the desire of the scheduled carriers, the revised bill also included a definition of charter, which followed the CAB's definition in Part 207,[36] including the prohibition on charters to travel agents, but the Senate Committee added an exception where the transportation offered was part of an all-expense tour.[37] This was the first time that all-expense tour charters (now called inclusive tour charters) were mentioned in the language of the proposed legislation. The effect of the Senate definition was to require that the CAB allow the supplementals to operate the inclusive tour type of charter, subject to proper regulations.[38] The Senate Report explained that this was proper because inclusive tour charters were "a very different sort of service from individually ticketed transportation."[39]

The House reported a revised H.R. 7318 on September 13, 1961. This was substantially the form in which it was eventually enacted.[40] Supplemental air transportation was defined as charter trips "to supplement the scheduled service,"[41] but "charter" was not defined. No individually ticketed authority was allowed at all, except in very limited peak-time circumstances.[42] As to the lack of a definition of "charter," the House Committee followed the scheduled carriers' position:[43]

> ". . . authority to define charter services should be left, as at present, with the Board, subject to the limi-

[36] 14 C.F.R. § 207.1, which governs domestic charters by the scheduled carriers.

[37] S.Rept. 688 at p. 1, App. 92b.

[38] Id. pp. 13-14, App. 120b-121b.

[39] Id. p. 14, App. 121b.

[40] H.Rept. 1177, 87th Cong. 1st Sess. (1961), App. 17b. The House version of the bill appears at App. 18b-30b.

[41] Id. p. 1, App. 18b.

[42] Id. p. 2, App. 20b-22b.

[43] Id. p. 11, App. 42b.

tations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications."

The Transatlantic Charter Investigation

In the meantime, the Transatlantic Charter Investigation, the ancestor of the instant case, had begun before the Civil Aeronautics Board, to consider whether one or more carriers should be certified to conduct transatlantic passenger charters, and if so, under what conditions.[44]

At the prehearing conference on August 18, 1961, ten days after the Senate Report was issued, there arose a dispute as to whether the forthcoming hearings should include evidence directed to the inclusive tour charter concept. The Examiner referred the question to the Board,[45] and on October 18, 1961, the Board stated that the ITC concept was within the scope of the proceeding, even though then prohibited by Part 295 of the CAB regulations (which governs transatlantic charters by supplemental carriers).[46]

The evidentiary hearing was held April 9 through May 2, 1962, during which considerable evidence was introduced on the practicalities, benefits and dangers of ITCs. ASTA on behalf of the travel agent industry and practically all of the supplemental carrier parties supported the ITC concept.[47] The route carriers opposed the concept. The CAB Bureau of Economic Regulation was originally noncommittal, but when it filed its brief on July 26, 1962, for the first time it came out in support of ITCs.[48]

---

[44] Order E-16023 (Nov. 14, 1960), App. 617a-618a.

[45] Prehearing Report, August 28, 1961, Tr. 12652-3.

[46] Order E-17607, App. 644a-647a.

[47] The transcript of the hearing appears in the record, Tr. 12790-15196.

[48] Brief of Bureau Counsel, filed June 26, 1962, Tr. 19339.

The Conference Committee Report

Returning to events in Congress, on June 28, 1962, the Senate and House conferees finally reached agreement and filed their conference report.[49] The compromise bill was substantially the version adopted by the House, except that the supplementals were given two years to phase out their existing individually ticketed operations. Because of an accident involving a supplemental carrier, and one or two strandings of charter groups,[50] new provisions were added dealing with liability insurance and performance bonds.[51] The conference committee without explanation dropped the Senate definition of charter to allow the supplementals to operate ITCs.

The statement of the House Managers, attached to the conference report, noted that the Senate bill would have permitted individually ticketed services on a permanent basis, while the House insisted on none at all (except limited peak-time service).[52] But on the question of why the Senate's charter definition was dropped, the statement, like the conference report itself, gave no sign of deviation from the explanation in the House Report, to the effect that the definition was to be left up to the Board.

The next day, June 29, six of the 17 members of the conference committee (all of the members were called "managers") made speeches on the floor to the effect that charters to travel agents were evil or illegal, or that the conference committee had banned them.

Senator Cotton opposed charters to travel agents; he hoped the Board would continue to be firm to prevent abuse of charter service and he added:[53]

---

[49] Conf. Rept. (H. Rept. 1950), 87th Cong. 2d Sess. (1962), App. 173b.

[50] See 108 Cong. Rec. 12284, 12322 (June 29, 1962); App. 749a.

[51] App. 176b-177b.

[52] App. 199b-200b.

[53] 108 Cong. Rec. 12284 (June 29, 1962).

> "The Board has a serious obligation to see that charter services do not become individually ticketed services through subterfuge or abuse."

Senator Scott opposed charters to travel agents, because, he said,[54]

> ". . . a travel agent could charter an airplane, and then offer the seats to the general public at less per head than the tariff fares . . ."

Senator Thurmond stated that he was advised that the CAB Bureau of Economic Regulation had advocated inclusive tour charters (which was true, see note 48 above), which he said would be "intolerable"; the congressional intent was that the supplementals [55]

> ". . . shall not conduct any individually ticketed business, but, rather, shall concentrate exclusively on full plane load charters."

Over on the House side, Representative Walter (not a conferee and not even a member of the House Committee) asked what had happened to the provision which would have put the travel agent "in position to engage in rate cutting." [56] Representative Williams (a conferee) replied that the provision had been dropped.[57] Representative Harris confirmed the point, and read a statement which included the comment that charter does not include "any device where individually ticketed services would be offered or performed under guise of charter." [58] Mr. Walter thanked Mr. Harris for the assurance that the bill would not allow [59]

> ". . . all-expense tours or other devices for destroying the meaning of charter and engaging in a type of in-

---

[54] Id. at 12284.

[55] Id. at 12285.

[56] Id. at 12322.

[57] Id. at 12322.

[58] Id. at 12322.

[59] Id. at 12323.

dividually ticketed authority under some guise or other."

Representative Collier then made a speech in language word-for-word identical to the statement previously read by Mr. Harris.[60]

The compromise bill was approved by both houses, and by the President, and became law on July 10, 1962.[61]

Further Proceedings Before the CAB

Back at the Transatlantic Charter proceeding, on September 21, 1962, Examiner James S. Keith filed his recommended decision.[62] He found that ITCs would be unduly diversionary to Pan American and Trans World Airlines, whose earnings were then at a low level, and concluded that the time was not "propitious" for the introduction of this concept.[63] He did not discuss the legislative history of the Act of July 10, 1962, or otherwise consider whether the Board had power to allow ITCs.

On October 8, 1963, the Board affirmed the examiner's reasoning with respect to inclusive tour charters.[64]

In the meantime, on July 12, 1963, a parallel proceeding had begun before the Board, called the Suppemental Air Service Proceeding.[65] Its purpose was to consider the advisability of certificates for supplementals in interstate transportation and in foreign transportation other than the transatlantic area. The scope of the proceeding ex-

---

[60] Id. at 12324, see note 58 above.

[61] 76 Stat. 143, Public Law 87-528.

[62] App. 654a.

[63] Id. at 736a.

[64] App. 826a. This decision was not published until March 3, 1964, App. 777a, because it was necessary to have the President's approval of certain other aspects of the opinion which involved foreign air transportation, 49 U.S.C. § 1461.

[65] App. 1a.

pressly included the issue of inclusive tour charters.[66] On August 27, 1965, Examiner Robert L. Park issued his recommended decision.[67] He analyzed the ITC concept at some length, finding that it posed "no significant threat to the certificated route carriers,"[68] and recommended that it be approved, with several restrictions to prevent abuse and diversion.[69]

Shortly after Examiner Park's decision in the Supplemental Air Service Proceeding was published, the Board reopened the Transatlantic Charter Investigation to reconsider the ITC question.[70]

On March 11, 1966, the Board issued several orders deciding the Supplemental Air Service and Transatlantic Charter proceedings. One order related only to the domestic area, and this was published immediately.[71] This order (1) certificated a number of supplementals to fly charters, including ITCs, anywhere in the 50 states,[72] and (2) adopted the basic regulations (Part 378) governing ITC operations.[73]

The other orders related to the overseas and foreign area,[74] and these were not published until September 30, 1966, after the President had approved certain portions of them.[75] These orders (1) certificated a number of sup-

---

[66] App. 19a.

[67] App. 44a.

[68] App. 135a.

[69] App. 100a-124a, 129a-136a, 205a.

[70] App. 960a, September 23, 1965.

[71] Order E-23350, App. 332a.

[72] App. 391a-410a.

[73] App. 411a-436a.

[74] For the definitions of domestic (interstate), overseas and foreign air transportation, see 49 U.S.C. § 1301(21).

[75] Under 49 U.S.C. § 1461, the issuance and terms of certificates authorizing overseas and foreign air transportation are subject to the approval of the President.

plementals to fly charters, including ITCs, between the United States and designated overseas and foreign areas,[76] and (2) amended Part 378 to extend it to overseas and foreign transportation.[77]

The Judicial Reviews

The order dealing only with the ITC concept (domestic phase) did not require Presidential approval, and so was final. The scheduled carriers appealed it to the United States Court of Appeals for the District of Columbia Circuit, which affirmed the Board on July 19, 1966.[78] The only question discussed on appeal was whether the floor speeches prevented the Board from allowing ITCs; the court concluded that the floor speeches did not restrict the Board's preexisting authority to define charter so as to include the ITC concept.[79]

The orders dealing with the ITC concept (overseas and foreign phase), which treated the concept exactly the same as in the domestic phase, were published on September 30, 1966. Rather than seek certiorari on the domestic phase, the route carriers appealed the foreign phase to the U.S. Court of Appeals for the Second Circuit, which reversed, on the grounds that the floor speeches prevented the Board from allowing ITCs.[80]

From that decision the Board, the suppemental carriers, and ASTA, sought certiorari to resolve the conflict between the Second and District of Columbia Circuits. Certiorari was granted on January 29, 1968.

---

[76] Orders E-24237, E-24240, and E-24242, App. 543a, 1060a and 1097a.

[77] Orders E-24238 and E-24240, App. 596a and 1060a.

[78] *American Airlines* v. *CAB*, 365 F.2d 939 (D.C. Cir. 1966).

[79] The court said "the Board had preexisting authority to determine the definition of charter . . ." and that "Congress did not intend to withdraw this authority." 365 F.2d at 944.

[80] Decision below, *Pan American World Airways* v. *CAB*, 380 F.2d 770 (2d Cir. 1967), App. 1119a.

SUMMARY OF ARGUMENT

I. The Floor Speeches Did Not Restrict The Board's Pre-existing Authority to Allow Inclusive Tour Charters

At the time of the 1961 hearings, the supplementals wanted the new concept of ITCs, but the Board's rules prohibited any charter whatever to a travel agent, which ruled out ITCs. The Senate Committee agreed that the supplementals should have ITC authority, and wrote a bill requiring the Board to allow ITCs.

The scheduled carriers did not want the supplementals to have any authority to charter to travel agents, because, they claimed, it would be used as a subterfuge for individually ticketed operations. The House Committee knocked out the Senate ITC proviso, explaining that the definition of charter should be left up to the Board, "as at present."

At the Senate-House conference, the House version prevailed, and the conference report gave no indication of any deviation from the reasoning expressed by the House Committee, or any indication that any of the Board's previous powers to define charter were to be restricted. Thus, up to the moment the first floor speech was made, the legislative record was clear that the definition of charter, and the discretion whether to allow ITCs (assuming only that ITCs were consistent with the general policies of the Act) were being left to the Board, which had always had that discretion.

On June 26, 1962, the CAB Bureau of Economic Regulation filed a brief in the Transatlantic Charter Investigation, for the first time coming out in favor of ITCs. The floor speeches were made three days later.

The speeches expressed the views of a minority of the conference committee, on a point which the full committee had either not considered or had decided to ignore, which in either case had the effect of ratifying the stated view

of the House Committee. The speeches were not competent to modify that ratification, even had there been language in the bill capable of being interpreted as restricting the Board's discretion on the point, which there was not.

Perhaps even more important, the speeches were based on an erroneous understanding of the ITC proposal. The speakers feared that ITCs would be used as a subterfuge to enable the supplementals illegally to reenter the individually ticketed market, a fear which upon analysis is totally misplaced, since the ITC by nature is unattractive to the great bulk of the scheduled carriers' individually ticketed traffic, and is made even less attractive by the Board's regulations which require the ITC to cost 10% more than scheduled transportation, to last seven days, and to make three overnight stops.

II. Inclusive Tour Charters Are Consistent With the Policy of the 1962 Act

If the floor speeches do not control this case, as clearly they do not, then the remaining question is whether the Board's finding that ITCs would "supplement the scheduled service," as they must under the 1962 Act, was rational and supported by substantial evidence.

That finding depends primarily on how much diversion ITCs may cause from the scheduled carriers' traffic. The Board found that diversion would not be significant, considering (1) that the inherent nature of ITCs, together with the tight restrictions imposed on them by the Board, make them unattractive to the vast majority of scheduled passengers; (2) that the British aviation authorities, who have had many years' experience with ITCs, have found that they do not cause material diversion; and (3) that the experience of the Interstate Commerce Commission with respect to motor bus ITCs has been that diversion has not been demonstrated.

The Board's finding was rational and supported by substantial evidence; indeed, no other finding would have been.

ARGUMENT

I. The Floor Speeches Did Not Restrict the Board's Pre-existing Authority to Allow Inclusive Tour Charters

Section 204(a) of the Federal Aviation Act of 1958 empowers the Civil Aeronautics Board to make [51]

> ". . . such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out the provisions of . . . this Act."

So long as the Board acts consistently with statutory guidelines, it presumably has the authority to define "charter," which is to say, has the authority to define what kind of charter traffic the supplementals may carry.

The question, of course, is, what about those floor speeches? Do they establish a statutory guideline which prevents the Board from defining charter so as to include ITCs? They undoubtedly were *intended* to have that effect. We say they are not competent to have that legal effect.

1. *To Allow the Speeches to Control the Meaning of the Act is Contrary to Common Sense*

We think what happened was this: during the hearings there was some reference to an alleged abuse that existed many years ago, whereby a promoter would charter a supplemental carrier and use that charter to fly travelers from one place to another.[52] Elsewhere the same witness referred to a travel agent advertising in the papers for passengers, and when he had assembled a planeload he would fly them to their destination.[53] This, of course, if true, was a flagrant abuse of the statutory plan that scheduled point-to-point, individually ticketed transporta-

---

[51] 49 U.S.C. § 1324(a), 72 Stat. 743.

[52] *Senate Hearings*, p. 268; App. 219b.

[53] *Senate Hearings*, p. 267.

tion should be furnished only by scheduled carriers, not by travel agents or anyone else. This abuse, if it ever existed, was stopped in 1951, when the Board prohibited charters to persons acting as travel agents.[84]

During the hearings the scheduled carriers raised this spectre—it said that if charters to travel agents are allowed, the same abuses as described above would recur.[85] Even Chairman Boyd of the Board may have shared this first-glance reaction to a charter to a travel agent,[86] but it must be recalled that ITCs were a new concept, not then known in the air travel industry in this country.

Since the Board at that time did not allow any charters to travel agents,[87] the scheduled carriers felt safe in merely fighting to eliminate the Senate definition which would have required the Board to allow ITCs. Its reasonable-sounding approach was, "there is no present need for the Congress to undertake a detailed definition of 'charter' in the Federal Aviation Act."[88] That is, let's leave it up to the Board. It succeeded in persuading the House Committee to take this approach.

The Senate Committee, realizing that legitimate ITCs were not capable of the kind of abuse which the scheduled carriers professed to be alarmed about, did not accept the scheduled carriers' position, and since the Board did not at that time allow charters to travel agents, the Senate Committee was aware that it would have to define charters legislatively in order to validate ITCs.

---

[84] *Senate Hearings*, p. 268; App. 219b.

[85] *Senate Hearings*, pp. 266, 268, 270; *House Hearings*, p. 243, all fully quoted at notes 31 through 34 above.

[86] *Senate Hearings*, p. 36.

[87] Parts 207 and 295, see note 29 above.

[88] *House Hearings*, p. 243, quoted at note 34 above.

After both House and Senate reports had been published, nothing more was heard of ITCs until the day of the speeches. In the meantime, there was a crash by a supplemental carrier while carrying a military charter, and in view of that, and a previous crash of a financially marginal supplemental while carrying a football team charter, and one or two strandings of some civilian pro rata charters,[89] criticism was mounted against the supplementals as a group. The attention of the committees was devoted to working up requirements relating to liability insurance and performance bonds, which eventually went into the bill.[90]

The conference committee had several long sessions to try to resolve the differences on the individually ticketed authority.[91] The Senate insisted that the supplementals be allowed some such authority, but the House was equally insistent to the contrary, and in order to have a bill at all, the Senate finally gave in and accepted the token concession that the supplementals could have two years in which to phase out their existing individually ticketed operations.[92]

Then on June 26, 1962, two days before the conference committee published its report, the CAB Bureau of Economic Regulation filed a brief in the Transatlantic Charter Investigation before the Board, for the first time supporting the ITC concept.[93] One can imagine the consternation this caused among the scheduled carriers, and one can easily understand that they must have felt the need to do something immediately, before the bill was passed.

The rest is plain. Some of the conferees accepted the alarums about travel agents running individually ticketed

---

[89] See note 50 above.

[90] Sec. 4; App. 176b-177b.

[91] 108 Cong. Rec. 12320 (1962).

[92] Statement of Senator Monroney, 108 Cong. Rec. 12283 (1962).

[93] Tr. 19339, see note 48 above.

service under the guise of an ITC, and on June 29, in an atmosphere of excitement and haste, they declared that the Board must not allow ITCs.[94]

The conference committee as a whole, however, comprising 17 members, either did not consider ITCs, or if it did, failed to *do* or even *say* anything about them. In either case, the legal effect was to place a stamp of approval on the record the way it then stood, which was, the definition of charter was up to the Board. The speeches did not represent the conference committee; they represented only six out of 17 members of that committee, who did not even bother to file a written dissent; in the circumstances they cannot be held to express the view of the full committee. If the majority of the committee had wanted to ban ITCs, all they had to do was add a simple proviso banning ITCs to the first section of the bill which defined supplemental air transportation.

As the District of Columbia court noted, the Board had preexisting authority to allow the supplementals to operate ITCs.[95] Given this preexisting authority, what was it in the 1962 Act which took it away? Nothing in the Act does so expressly or impliedly; the Act is silent as to ITCs or any other restriction on the type of traffic the supplementals may carry, beyond the broad injunction that the traffic must be charter traffic, and the service offered must "supplement the scheduled service." If the Act itself does not take the authority away, surely six speeches, unsup-

---

[94] See quotations at notes 53 through 60 above.

[95] 365 F.2d at 944. The doubts voiced in 1960 by the District of Columbia Circuit as to the authority of the Board to allow operations of the supplemental carriers were addressed to the individually ticketed authority; no question was ever raised about the right of the supplementals to fly charters, either under a blanket exemption, or under a certificate with exemption as to particular details. *United Air Lines* v. *CAB*, 108 U.S. App. D.C. 1, 278 F.2d 446 (1960). And see *American Airlines* v. *CAB*, 235 F.2d at 853 (1956), quoted at note 13 above.

ported by any language in the bill, cannot be given that effect. The District of Columbia Circuit properly found that "Congress did not intend to withdraw this authority." [96]

2. *To Allow These Speeches To Control The Meaning of The Act is Contrary to Established Rules of Statutory Construction*

The views of the speakers were in conflict with the officially stated views of the House Committee, to the effect that the Senate definition of charter was being dropped because "the authority to define charter services should be left, *as at present*, with the Board. . . ." [97] (Emphasis added.) Since this declaration by the House Committee, whose views prevailed, was in direct response to the supplementals' request for ITC authority, it is inconsistent with saying, as some of the speakers did, that the bill denies the Board authority to allow ITCs. That is, the supplementals said, "Define charter so as to give us ITC authority." The House Committee replied, "No, we will leave the power to define charter with the Board, where it is now." This is an affirmance, not a denial, of the Board's power to allow ITCs. Floor speeches in conflict with committee reports are not given controlling weight.[98] As the District of Columbia Circuit said, such a conflict [99]

> ". . . must give way to the generally accepted maxim of statutory construction that reports by the legislative committees responsible for formulating the legislation must take precedence in event of conflict over statements in the legislative debates on the floors of the houses of Congress. [citing cases]"

---

[96] 365 F.2d at 944.

[97] H. Rept. 1177, 87th Cong., 1st Sess. 11 (1961); App. 42b.

[98] *United States* v. *Wright Wood Dairy Co.*, 315 U.S. 110, 125 (1942), *Duplex Co.* v. *Deering*, 254 U.S. 443, 474 (1920).

[99] 365 F.2d at 949.

3. *To Allow These Speeches to Control the Meaning of the Act is to Honor the Error on Which They Were Based*

If the spectre raised by the scheduled carriers before certain members of Congress had any basis in fact, i.e., if travel agents under the concept of ITC could charter a plane and then sell point-to-point transportation to the traveling public, the case for ITCs would fall because they would be a guise for allowing the supplementals to go back into individually ticketed operations, something which the 1962 Act took away from them.

But such a notion is absurd. Legitimate ITCs inherently, by their very nature, are unattractive to the vast majority of scheduled travelers. In order for them to be economically feasible to the promoters, they must be rather tightly regimented and tailored to suit large masses of people, which immediately rules out most air travelers, either because of the round trip itinerary and long duration, or because of the general appeal of the services—the catering to middle and lower income, the treatment as novice tourists, the being in extended close contact with strangers.[100]

Moreover, the Board, as it would have been expected to do, has codified the inherent attributes of ITCs, and imposed several additional restrictions, to rule out possible abuses—the chief of which being that the tour price must be 10% more than the scheduled fares for the same itinerary.[101] It is noted that violations of the Board's rules is now subject to criminal and civil sanctions.[102] As discussed below, pp. 28-30, past experience with motor bus ITCs in this country and with air ITCs in Europe (neither of which has a 110% price requirement) has shown no such abuses.

---

[100] App. 1070a.

[101] 14 C.F.R. 378.2(b)(4).

[102] 49 U.S.C. §§ 1471(a) and 1472(a).

II. Inclusive Tour Charters Are Consistent With The Policy of The 1962 Act

As noted above, there is no merit to the notion that ITCs could be used as a subterfuge for individually ticketed operations. However, there is a less frightful, and more tenable fear raised against ITCs, which is that they may divert too much of the scheduled carriers' own inclusive tourist traffic. It is to this fear that Examiner Park and the Board addressed themselves. It should be noted that this more tenable argument was *not* the one which the scheduled carriers emphasized to Congress.

This argument is addressed to Agency discretion, not to principles of statutory construction. The Board is the Agency which Congress has made responsible for the promotion and regulation of the air transportation industry.[103] Because of its responsibility, and its expertise, its findings and judgments are presumptively correct, and reversible only if arbitrary or not supported by substantial evidence.[104]

1. *The Findings in This Case*

Examiner Park found that the scheduled carriers' inclusive tour traffic, while not neglected by any means, was "nowhere near its true potential."[105] He saw a "promising future" for ITCs,[106] and concluded that a controlled ITC program for the supplementals—[107]

> ". . . offers no significant threat to the certificated route carriers."

In fact, he concluded, "In the long run the conversion of additional segments of the traveling public to air travel

---

[103] 49 U.S.C. §§ 1302, 1324.

[104] See, e.g., *NLRB* v. *Hearst Publications*, 322 U.S. 111, 129, 131 (1944); *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1 (1968).

[105] App. 111a.

[106] App. 113a.

[107] App. 135a.

will broaden the base for air transportation and ultimately will inure to the benefit of the entire air transportation industry." [108]

Affirming, the Board found that "Clearly there is no showing that a five-year experiment in tour operations would pose any significant threat to the continued growth and prosperity of the route carriers." [109]

And in its opinion authorizing ITCs in the Transatlantic area, the Board said,[110]

> ". . . it is unlikely that the operation of inclusive tour charters can pose any significant threat to the established route operators."

There is ample evidence to support these conclusions, and nothing but unsupported arguments to refute them. Consider, for example, a tour leaving New York Saturday morning, spending several days in Mexico City, then to Trinidad for a few days, then to Rio for a week, returning to New York on Friday, the 14th day. The tour would include hotels, meals, sightseeing and entertainment. It is clear that the only persons diverted from scheduled traffic would be people who want that very tour, including the regimentation, the rigid schedule, and being in extended close contact with strangers, and being treated as novices.[111] How many of these takers would have taken a tour using a scheduled airline? The Board concluded there would not be many.

In the Supplemental Air Service case the Examiner found that only 9% of the scheduled traffic consisted of tour passengers domestically, and not over 15% internationally.[112] In the Transatlantic Charter Investiga-

---

[108] App. 134a.

[109] App. 849a.

[110] App. 1070a.

[111] Board Opinions, App. 344a-345a, App. 1070a.

[112] App. 111a.

tion, the evidence showed that less than 13% of Pan American's economy passengers were persons traveling on package (all-expense) tours,[113] and of these "much more than half" were individual tourists,[114] which means the group tourists would be "much" less than 6.5%. Since inclusive charter tours are group tours, and large groups at that, it is probable that to the extent they appeal to the scheduled passengers at all, it will be primarily to those on group tours, who, as stated, comprise "much" less than 6.5% of scheduled passengers. If group tourists comprise 3% of scheduled passengers, the maximum threat of diversion would probably be some fraction of that, depending on intensity of marketing, availability of equipment, public acceptance, similarity of itinerary, value of the tour for the price, etc. The bulk of the ITC tourists would be newly generated traffic.

2. *The British Experience With ITCs*

The British experience with ITCs has been that diversion is in fact not a problem, even though British ITCs need only cost 100% of scheduled fares, rather than 110%, as the CAB has ruled for American ITCs.[115] Examiner Park dealt with the British experience at length.[116] He found that the amount of ITC traffic departing from Britain (on both British and foreign carriers) increased from 249,000 in 1960 to 1,050,000 (estimated) in 1964, more than a quadrupling in four years.[117] He found that most of these passengers were young, of lower to middle income, many of whom were first-time travelers.[118] He said, "it is clear that the low cost British

---

[113] Testimony of Pan American official, Tr. 15176. See also Examiner's decision, App. 713a.

[114] Tr. 15178.

[115] App. 118a.

[116] Examiner's Decision, App. 113a-124a.

[117] Id., App. 114a-115a.

[118] Id., App. 116a, 119a, 120a.

IT charters have been highly successful in opening up a sizeable new traffic market of persons not previously using air service, to the primary benefit of the low or middle income individual who would not otherwise fly." [119]

The British system is to require advance approval of ITCs, and approval is granted after consideration of factors such as likelihood of diversion.[120] The Examiner found "no convincing showing that the IT charter development [in Britain] has had any material adverse impact upon the scheduled carriers," [121] citing an ICAO study and statements of British regulatory authorities.[122] See also the 1965 Annual Report of the British Air Transport Licensing Board,[123] which states:

> "11. In 1961, when we first addressed ourselves to the licensing of inclusive tours, we were confronted with two rival theories. The theory of the charter companies was that I.T. charters not only catered for people who were not prepared to meet the cost of holidays based on scheduled service rates, but also had the effect, because of the especially economical facilities offered, of attracting others to air travel for the first time. Many of the latter, having been introduced to air travel in this way, would become airminded and therefore more likely in future to use the scheduled air services as a normal means of travel in preference to rail or boat services. So far therefore from diverting traffic from the scheduled carriers, the charter operators were in the long run

---

[119] Id., App. 118a.

[120] Id., App. 117a.

[121] Id., App. 120a.

[122] Id., App. 118a-120a.

[123] This report was published too late to include in the record before the Examiner. A photocopy of excerpts is attached as Attachment A to this brief. An earlier report, which is in the record, stated that ITCs "should not involve material diversion." ASTA Exh. 13 (1958 ATLB Report), p. 11, par. 12, Tr. 17072.

conferring a positive benefit upon them by providing an ever-expanding market for their services. The theory of B.E.A., on the other hand, has consistently been that it is obvious that the charter services, operating as they do at peak periods of the year, must inevitably skim off the cream of the holiday traffic which would otherwise accrue to the scheduled services.

"12. On our first approach to the problem it appeared to us that to strike the right balance between these opposing views was a matter of some nicety (see paragraph 22 of our first Report). But *after four years' experience of the inter-action of the two types of traffic, we can find no evidence that inclusive tours have been responsible for any material diversion of traffic from the scheduled carriers.* On the contrary, B.E.A.'s total passenger traffic continues to grow at much the same rate as before the inclusive tour charter traffic reached its present proportions." (Emphasis added.)

3. *The ICC Experience With ITCs*

The Interstate Commerce Commission experience with ITCs by motor bus is relevant to the diversion question. In the *Tauck Tours* case, Division 5 of the ICC (eventually affirmed by this Court) stated: [124]

"Thus, a broker offering the public a legitimate all-expense tour may obtain charter service with its many advantages for this type of operation and the regular-route common carrier may still enjoy the type of traffic which it transports and the service which it has been authorized to perform *without the threat of destructive competition.*" (Emphasis added.)

---

[124] *Tauck Tours Inc. Extension*, 52 M.C.C. 378, 377 (1951) affirmed by full Commission, 63 M.C.C. 493, affirmed sub nom. *National Bus Traffic Assn.* v. *United States*, 143 F.Supp. 689 (D.N.J. 1956), affirmed, 352 U.S. 1020.

In the *Edwards* case, Division 1 of the ICC, in considering ITCs by bus to see hockey games, stated: [125]

> "Of course, the defendant's hockey tours and the complainant's regular-route service are not wholly noncompetitive. Regular-route carriers provide intercity transportation for persons desiring to attend athletic events. *The complainant has failed to show, however, that the defendant's hockey tours have diverted any traffic*, or that the defendant is merely satisfying, rather than generating, a desire on the part of Erie residents to witness hockey games in Buffalo." (Emphasis added.)

Based on the inherent nature of ITCs, together with the restrictions imposed on them by the Board, and on the experience of the European air ITC program and the U.S. motor bus ITC program, the Board rightly concluded that diversion was not likely to be significant in the ITC proposal now before this Court, and that ITCs are "supplemental" within the meaning of the 1962 Act.[126]

CONCLUSION

In closing, it should be noted that the semantic difficulties in this case have interfered with a meeting of the minds. It is possible, with due care, to discuss this case in terms of "group" travel versus "individually ticketed" travel, provided that "group" is recognized as implying the kind of charter traffic which is primarily newly generated and not diverted from the scheduled service of the route carriers, and "individually ticketed" is recognized as implying the scheduled traffic which belongs to the route carriers, and "individually ticketed" is recognized those terms really mean. Defining these terms narrowly

---

[125] *Greyhound Corp.* v. *Edwards*, 96 M.C.C. 112, 124. The *Edwards* case was affirmed by the full Commission on the point here involved, 100 M.C.C. 453 (1966).

[126] App. 345a.

and technically could lead to an unsound result. *Any* planeload of passengers is a "group" in the technical sense; something more is needed to define which groups are proper for the supplementals to carry. Likewise, a technical definition of "individually ticketed" could prevent anyone from traveling on a supplemental carrier, since all charter passengers, single entity, pro rata, and ITC, are given tickets of one sort or another in order to board the plane.

The heart of the problem is one of basic legislative policy, not of semantics—*viz.*, whether allowance of ITCs will cause too much diversion from the scheduled carriers. We submit that the Board rightly decided that the answer was no, and that this answer brings the case into harmony with the real concern of the floor speeches and with the policy of the Act.

For the foregoing reasons the judgment of the court below should be reversed.

Respectfully submitted,

CHARLES A. HOBBS,
Counsel for Petitioner,
The American Society of Travel Agents

WILKINSON, CRAGUN & BARKER
GLEN A. WILKINSON
PAUL S. QUINN
Of Counsel

March 14, 1968

ATTACHMENT A

MINISTRY OF AVIATION

Fifth Report of Air Transport Licensing Board

(FOR YEAR ENDED 31st MARCH, 1965)

Presented to Parliament in Pursuance of Section 8(2) of the Civil Aviation (Licensing) Act, 1960.

Ordered by The House of Commons *to be printed*
27th July, 1965

LONDON
HER MAJESTY'S STATIONERY OFFICE
PRICE 4s. 6d. NET

TABLE OF CONTENTS

SECTION I CONSTITUTION .. .. Paras. 1— 4

SECTION II GENERAL POLICY .. .. Paras. 5—28

SECTION III CIVIL AVIATION (LICENSING) REGULATIONS 1964 Paras. 29—44

SECTION IV TARIFFS .. .. Paras. 45—87

SECTION V SPECIAL TOPICS

- Stand-by Fares .. .. Para. 88
- Unused Licences .. .. Paras. 89—90
- Representations under Section 4 .. .. Paras. 91—92
- Freight Services between Great Britain and Northern Ireland .. .. Paras. 93—94
- Financial Resources of Operators and Tour Organisers Paras. 95—99
- Contractual Arrangements .. .. Para. 100
- Publication of Statistics .. .. Paras. 101—107
- Appeals .. .. Para. 108

SECTION VI SUMMARY OF WORK OF THE BOARD

- Meetings .. .. Paras. 109—111
- Removal of Offices .. .. Para. 112
- Licences .. .. Paras. 113—117
- Staff .. .. Para. 118

APPENDIX A—Membership of Advisory Committees for North East England, Northern Ireland, Scotland and Wales.

APPENDIX B—Exemptions from Licensing.

APPENDIX C—Section 2 of Civil Aviation (Licensing) Act, 1960.

APPENDIX D—Statement by the Minister of Aviation (The Rt. Hon. Roy Jenkins, M.P.) on certain aspects of Civil Aviation Policy.

APPENDIX E—Civil Aviation (Licensing) Regulations 1964.

APPENDIX F—Summary of conclusions and recommendations relating to certain representations made under Section 4 of the Act.

APPENDIX G—List of licence holders at 31st March, 1965.

wider interest and may or may not always coincide with the particular interests of British civil aviation. But it is these particular interests which concern us, and we shall continue to exercise our functions with the furtherance of these interests as our objective.

INCLUSIVE TOUR CHARTERS

10. One matter of procedure arising from the Minister's Statement concerns the handling of applications by British operators for inclusive tour charter services on holiday routes. At the end of the year under review, we had received no formal request from the Minister to consider the simplification and expedition of our procedures in this field; but this question had in any event been engaging our attention for some considerable time.*

11. In 1961, when we first addressed ourselves to the licensing of inclusive tours, we were confronted with two rival theories. The theory of the charter companies was that I.T. charters not only catered for people who were not prepared to meet the cost of holidays based on scheduled service rates, but also had the effect, because of the especially economical facilities offered, of attracting others to air travel for the first time. Many of the latter, having been introduced to air travel in this way, would become air-minded and therefore more likely in future to use the scheduled air services as a normal means of travel in preference to rail or boat services. So far therefore from diverting traffic from the scheduled carriers, the charter operators were in the long run conferring a positive benefit upon them by providing an ever-expanding market for their services. The theory of B.E.A., on the other hand, has consistently been that it is obvious that the charter services, operating as they do at peak periods of the year, must inevitably skim off the cream of the holiday traffic which would otherwise accrue to the scheduled services.

12. On our first approach to the problem it appeared to us that to strike the right balance between these opposing views was a matter of some nicety (see paragraph 22 of our first Report). But after four years' experience of the interaction of the two types of traffic, we can find no evidence that inclusive tours have been responsible for any material diversion of traffic from the scheduled carriers. On the contrary, B.E.A.'s total passenger traffic continues to grow at much the same rate as before the inclusive tour charter traffic reached its present proportions.

13. It may be that no major change in procedure will prove necessary. We were glad to see the Minister's statement that it is not in his view desirable to apply restrictions to inclusive tour services. Our decisions on applications for the services in 1965, with marginal variations of emphasis in the light of the evidence presented in respect of the several routes, clearly convey the same general view. One of the most time-consuming elements in previous hearings of these applications has been the repetitive cross-examination addressed by scheduled service operators to witnesses supporting individual applications even though the objectors conceded that their real objection was to the total of capacity applied for to particular destinations rather than to the individual applications as such. We do not seek to deny to the objectors any of their rights under the procedure laid

*Note: The Minister's request was conveyed to us on 8th April, 1965.

down, but we think that, against the background of our accumulated experience, they may well reconsider the substance of their objections, or at any rate find a less onerous way of presenting their views to us. We shall review this question again in the light of experience of the 1965 hearings.

AMENDMENT OF APPLICATIONS

14. There are one or two more general matters of procedure on which we desire to comment in this Report. We alluded in last year's Report to the limits of our willingness to accept amendments to applications in the course of a hearing. The tendency to submit substantial amendments in this way has persisted in some degree, and we re-affirm our determination that any such amendments which in our opinion widen materially the scope of the application or change its character will not be accepted at a hearing.

PRESENTATION OF APPLICATIONS AND OBJECTIONS

15. We have also noted on occasion a regrettable lack of clarity and definition in both the reasons advanced for applications, and in the written grounds of objection. We recognise that the case for an application can seldom be presented comprehensively on an application form; and that, in framing his grounds of objection in writing, an objector can have regard only to that amount of detail of an application that is published in our Licensing Notices. We appreciate also that additional grounds of objection, and additional counter-arguments in defence of an application, can and often do arise during the course of a hearing. By no means, therefore, do we expect that the respective written submissions will necessarily embrace all the factors involved. But that is no reason why, as sometimes happens, virtually no reasons are advanced in the application form for the submission of the application; or, in the case of objections, little or no attempt is made to state the specific grounds on which the objection is based. We, and potential objectors, are entitled to know ab initio what purpose a proposed service is intended to serve. Similarly, in the case of objections, a mere reproduction of all the possible grounds of objection arising from Section 2 (2) of the Act may leave a comfortable freedom of selection on the day, but is patently unfair to the applicant and not helpful to us.

16. It is our view that the requirements of the normal procedure, in asking for a concise indication, in the case of applications, of the existing or potential need or demand for the proposed service and a concise statement, in the case of objections, of the grounds on which the objection is based are essentially reasonable; and we cannot be expected to countenance non-compliance with these requirements which, in the generality of cases, seems to result not so much from any intrinsic difficulty as from an absence of any real effort to comply. In voicing this criticism we should like to make it clear that it is only a minority of cases to which reference is intended; and we do not mean to imply that, for the most part, applicants and objectors do not co-operate fully in facilitating the discharge of our task.

"DUPLICATE" APPLICATIONS

17. During the year we heard a small number of applications for inclusive tour services which virtually duplicated applications we had already refused and were therefore, in effect, appeals against our decisions. In two cases, for special reasons, we granted the later applications; and, if only on this account, we can

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 15 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 800, 946, 969

WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., SATURN AIRWAYS, INC., PURDUE AERONAUTICS CORP., CAPITOL INTERNATIONAL AIRWAYS, INC., and CIVIL AERONAUTICS BOARD, and AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,

Petitioners,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

EDWARD R. NEAHER
25 Broadway
New York, New York 10004
Counsel for Respondents

CARL S. ROWE
GERTRUDE S. ROSENTHAL
CHADBOURNE, PARKE, WHITESIDE & WOLFF
New York, New York
Of Counsel

INDEX

	PAGE
Questions Presented	1
Statement of the Case	2
A. Introductory Summary	2
B. The Parties	4
C. The Orders Set Aside	5
D. The Regulatory Problems Created by the Supplementals' Activities Which Necessitated the 1962 Amendment	7
E. The Legislative History of the 1962 Amendment: Public Law 87-528	13
1. The Board's Legislative Proposals	14
2. The Senate Committee's Modification of the Bills Introduced	19
3. The House Committee's Modifications	21
4. The Conference Committee's Action	27
F. The Board's Inclusive Tour Regulations	37
G. The Decision of the Court Below	41
Summary of Argument	43

PAGE

ARGUMENT:

I. The Board's Orders Granting Inclusive Tour Authority to Supplementals Involving Solicitation and Individual Ticketing of the General Public Were Correctly Set Aside as Violating the Federal Aviation Act 48

A. The 1962 Amendment Does Not Authorize the Grant of Inclusive Tour Authority to Supplementals 50

1. The statute itself does not authorize the grant of individually ticketed, inclusive tour authority 50

(a) The 1962 Amendment Does Not Even Refer to Inclusive Tours 50

(b) "Charter trips in air transportation" Do Not Include Inclusive Tours 50

(c) The Distinction Between "Charters" and "Individually Ticketed Services" in the 1962 Amendment Demonstrates That "Charters" Do Not Include Inclusive Tours .. 54

2. The legislative history of the 1962 Amendment confirms that individually ticketed, inclusive tour authority is not authorized 56

3. The use of travel agents does not transform inclusive tours into charters 63

PAGE

B. The Board Cannot by Regulation Override the Limitations Intended by Congress 65

C. The Petitioners' Reliance on Motor Carrier Cases Is Misplaced 68

D. Economic Advantages to the Supplementals Cannot Justify Disregard of the 1962 Amendment 72

II. The Board Unlawfully Deprived Respondents of a Hearing in the Reopened Transatlantic Charter Investigation 73

A. The Board Illegally Amended Certificates Without a Hearing 74

B. The Board Did Not Meet the Hearing Requirements of the Act Before Granting Inclusive Tour Authority in New Certificates 76

C. The Board Was Required to Give Petitioners the Opportunity to Meet New Data the Board Relied On 77

D. Petitioners' Attempt to Prevent Adjudication of the Board's Failure to Meet Procedural Requirements 80

III. The Orders Challenged Are Subject to Review Although Approved by the President .. 82

CONCLUSION 86

PAGE

APPENDIX A:

Committee Members A-1

APPENDIX B:

Inclusive Tours Authorized by the Board B-1

APPENDIX C:

Specimens of Advertising by the Supplementals and Tour Operators C-1

APPENDIX D:

Brochures for Inclusive Tours D-1

TABLE OF AUTHORITIES

Cases:

Abbott Laboratories v. Gardner, 387 U.S. 136 (1967) .. 84
Aero-Peninsular Compliance Case, 24 C.A.B. 469 (1957) 11
Air America Enforcement Proceeding, 18 C.A.B. 393 (1954) 8
American Airlines, Inc. v. Civil Aeronautics Board, 235 F.2d 845 (D.C. Cir. 1956), cert. den. 353 U.S. 905 (1957) 11
American Airlines, Inc. v. Civil Aeronautics Board, 348 F.2d 349 (D.C. Cir. 1965) 42, 82
American Airlines, Inc. v. Civil Aeronautics Board, 365 F.2d 939 (D.C. Cir. 1966) 9, 41
American Shipbuilding Co. v. National Labor Relations Board, 380 U.S. 300 (1965) 66

PAGE

Baker v. Carr, 369 U.S. 186 (1962) 85
Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964) 85
Barenblatt v. United States, 360 U.S. 109 (1959) 65
Brown Shoe Co. v. United States, 370 U.S. 294 (1962) 60
Burfenning v. Chicago, St. Paul, Minneapolis & Omaha RR. Co., 163 U.S. 321 (1896) 67

Case Swane Co. v. Sunkist Growers, Inc. (Slip Op. No. 66, October Term, 1967), 36 U.S.L. Week 4071 (December 18, 1967) 60
Chicago & Southern Air Lines v. Waterman S.S. Corp., 333 U.S. 103 (1948) 41, 47, 48, 83, 85
The Chicago Junction Case, 264 U.S. 258 (1924) 78
Cole v. Young, 351 U.S. 536 (1956) 85
The Colony, Inc. v. Commissioner of Internal Revenue, 357 U.S. 28 (1958) 60

Deep South Broadcasting Co. v. Federal Communications Commission, 347 F.2d 459 (D.C. Cir. 1965) 79
DeGraw v. Toon, 151 F.2d 778 (2 Cir. 1945) 78
Delta Air Lines, Inc. v. Civil Aeronautics Board, 280 F.2d 43 (2 Cir. 1960), affd. 367 U.S. 316 (1961) 47, 74, 75, 76
Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921) 61

Estep v. United States, 327 U.S. 114 (1946) 85

Federal Communications Commission v. American Broadcasting Co., 347 U.S. 284 (1954) 67
Federal Trade Commission v. Raladam Co., 283 U.S. 643 (1931) 67

PAGE

First National Bank v. Walker Bank & Trust Co., 385 U.S. 252 (1966) 60
Fordham Bus Corp. v. United States, 41 F.Supp. 712 (S.D.N.Y. 1941) 69

Gray v. Powell, 314 U.S. 402 (1941) 67
Greyhound Corp. v. Edwards, 100 M.C.C. 453 (1966) 70

Hacienda Hotels-Motels, Rooms and Flight Reservations, Inc. and U.S. Aircoach, 25 C.A.B. 741 (1957) 11
Hardin v. Kentucky Utilities Co., 390 U.S. 1 (1968) ..61, 66

International Association of Machinists AFL-CIO v. Central Airlines, Inc., 372 U.S. 682 (1963) 84
Interstate Commerce Commission v. Louisville & Nashville RR Co., 227 U.S. 88 (1913) 77

Kent v. Dulles, 357 U.S. 116 (1958) 85

Large Irregular Air Carrier Investigation, 22 C.A.B. 838 (1955) 10
Large Irregular Air Carrier Investigation, 28 C.A.B. 224 (1959), affd. *sub nom.* Great Lakes Airlines, Inc. v. Civil Aeronautics Board, 294 F.2d 217 (D.C. Cir. 1960), cert. den. 366 U.S. 965 (1961) 8, 11, 12
Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. National Labor Relations Board, 365 U.S. 667 (1961) 60

Mastro Plastics Corp. v. National Labor Relations Board, 350 U.S. 270 (1955) 61

PAGE

Mitchell v. Kentucky Finance Co., 359 U.S. 290 (1959) 60-61
Morgan v. United States, 304 U.S. 1 (1938) 76

National Labor Relations Board v. Allis Chalmers Mfg. Co., 388 U.S. 175 (1967) 61
National Labor Relations Board v. Brown, 380 U.S. 278 (1965) 66
National Labor Relations Board v. Coca Cola Bottling Co., 350 U.S. 264 (1956) 67
National Labor Relations Board v. Fruit & Vegetable Packers & Warehousemen, Local 760, 377 U.S. 58 (1964) 61
National Labor Relations Board v. Insurance Agents International Union, 361 U.S. 477 (1960) 60, 67-68
National Woodwork Manufacturers Association v. National Labor Relations Board, 386 U.S. 612 (1967) 61
Northeast Airlines, Inc. v. Civil Aeronautics Board, 345 F.2d 484 (1 Cir. 1965), cert. den. *sub nom.* Eastern Air Lines, Inc. v. Northeast Airlines, Inc., 382 U.S. 845 (1965) 79

Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio, 301 U.S. 292 (1937) 77-78

Pan American World Airways, Inc. v. Civil Aeronautics Board, 380 F.2d 770 (2 Cir. 1967) 2, 4, 42, 48, 49

Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384 (1951) 61
Securities and Exchange Commission v. New England Electric System (Slip Op. No. 305, October Term, 1967), 36 U.S.L. Week 4190 (March 5, 1968) 67

PAGE

Social Security Board v. Nierotko, 327 U.S. 358 (1946) 67
Stark v. Wickard, 321 U.S. 288 (1944) 66

Tauck Tours, Inc., 54 M.C.C. 291 (1952), 63 M.C.C. 493 (1955), affd. sub nom., National Bus Traffic Association v. United States, 143 F.Supp. 689 (D.N.J. 1956), affd. 352 U.S. 1020 (1957) 69, 70, 71
Trans World Airlines, Inc. v. Civil Aeronautics Board, 339 F.2d 56 (2 Cir. 1964), cert. den., Hughes Tool Co. v. Trans World Airlines, Inc., 382 U.S. 842 (1965) 76
Twentieth Century Airlines, Inc., et al. Compliance Proceeding, 21 C.A.B. 133 (1955), affd. *sub nom.*, North American Airlines, Inc. v. Civil Aeronautics Board, 240 F.2d 867 (D.C. Cir. 1958), cert. den. 353. U.S. 941 (1957) 8, 11

Udall v. Tallman, 380 U.S. 1 (1965) 67
United States v. Abilene & Southern Railway Co., 265 U.S. 274 (1924) 77
United States v. Penn-Olin Chemical Co., 378 U.S. 158 (1964) 66
United States v. Third National Bank of Nashville (Slip Op. No. 86, October Term, 1967), 36 U.S.L. Week 4178 (March 4, 1968) 60
United States v. Wrightwood Dairy Co., 315 U.S. 110 (1942) 61
United States Overseas Airlines, Inc., Order No. E-9643 (October 11, 1955) 11

Volkswagenwerk v. Federal Maritime Commission (Slip Op. No. 69, October Term, 1967), 36 U.S.L. Week 4197 (March 6, 1968) 66

PAGE

W. S. Butterfield Theatres, Inc. v. Federal Communications Commission, 237 F.2d 552 (D.C. Cir. 1956) .. 79

Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1962) 85

Zemel v. Rusk, 381 U.S. 1 (1965) 85

Statutes:

Administrative Procedure Act:
§7 [60 Stat. 241, 5 U.S.C. §1006] 74

Civil Aeronautics Act of 1938:
[52 Stat. 977, 49 U.S.C. §401] 4

Clayton Anti-Trust Act:
§7 [38 Stat. 734, 15 U.S.C. §21] 60

Federal Aviation Act of 1958:
§101(32) [72 Stat. 737, as amended, 49 U.S.C. §1301(32)] 5
§101(33) [72 Stat. 737, as amended, 49 U.S.C. §1301(33)] 5
§401 [72 Stat. 754, as amended, 49 U.S.C. §1371] 3, 4, 73
§401(d)(1) [72 Stat. 754, as amended, 49 U.S.C. §1371(d)(1)] 22
§401(d)(2) [72 Stat. 754, as amended, 49 U.S.C. §1371(d)(2)] 22
§401(d)(3) [72 Stat. 754, 49 U.S.C. §1371(d)(3)] 5, 44, 69
§401(e) [72 Stat. 754, 49 U.S.C. §1371(e)] 19, 26, 71

PAGE

§401(g) [72 Stat. 754, 49 U.S.C. §1371(g)] ... 75
§416 [72 Stat. 771, 49 U.S.C. §1386] 8
§801 [72 Stat. 787, 49 U.S.C. §1461] 84, 85
§1005 [72 Stat. 794, 49 U.S.C. §1485] 84, 85
§1006 [72 Stat. 795, 49 U.S.C. §1486] 81, 84, 85

Motor Carrier Act:
§207a [49 Stat. 552, 49 U.S.C. §307(a)] 68, 69

National Labor Relations Act:
§8(b)(3) [61 Stat. 140, 29 U.S.C. §158(b)(3)] .. 68

P.L. 86-661 [74 Stat. 527] 13

P.L. 87-528 [76 Stat. 143] 2, 3, 5, 13

P.L. 89-554 [80 Stat. 378] 73, 74

Regulations of the Civil Aeronautics Board:

14 CFR §207.1(a)(2) 9

14 CFR §208 .....51, 52

14 CFR §295.2(k) 9

14 CFR §295.2(m) 9

14 CFR §295.11(b) 9

14 CFR §302.24(m)(1) 9, 78

14 CFR §302.24(m)(3) 9, 78

Congressional Material:

Conference Report, House Report No. 1950, 87th Congress, 2d Session 29

PAGE

Congressional Record:

107 Cong. Rec. 17163 26

107 Cong. Rec. 20081-20082 26

108 Cong. Rec. 3706 27

108 Cong. Rec. 4049-4052 ..... 27, 28

108 Cong. Rec. 12282-12285 ..... 30, 31, 32, 33, 34

108 Cong. Rec. 12318 59

108 Cong. Rec. 12322-12325 ..... 24, 25, 28, 35, 36, 60

Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 86th Congress, 2d Session 12

Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce on Limited Air Carrier Certificates, House of Representatives, 87th Congress, 1st Session 12, 14, 18

Hearings Before the Aviation Subcommittee of the Committee on Commerce on Supplemental Air Carriers, Senate, 87th Congress, 1st Session 12, 15, 16, 17, 18, 52

House of Representatives' Bills:

H.R. 7318, 87th Congress, 1st Session 14

H.R. 7512, 87th Congress, 1st Session 16, 18

H.R. 7593, 86th Congress, 2d Session 12

H.R. 9738, 75th Congress, 3d Session 84

PAGE

House Report No. 1177, 87th Congress, 1st Session 12, 13, 22, 23, 26, 66

Senate Bill, S. 1969, 87th Congress, 1st Session 14, 19, 20

Senate Report No. 688, 87th Congress, 1st Session 13, 62

Other Authorities:

C.A.B. Air Carrier Financial Statistics, June 1967 5

C.A.B. Air Carrier Analytical Charts and Supplemental Carrier Statistics, June 1967 5

In the

Supreme Court of the United States

October Term, 1967

Nos. 800, 946, 969

World Airways, Inc., Trans International Airlines, Inc., Saturn Airways, Inc., Purdue Aeronautics Corp., Capitol International Airways, Inc., and Civil Aeronautics Board, and American Society of Travel Agents, Inc.,

Petitioners,

—against—

Pan American World Airways, Inc., Trans World Airlines, Inc. and American Airlines, Inc.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

Questions Presented

The questions framed by petitioners avoid the basic question at issue by assuming its answer. That question is not whether the Civil Aeronautics Board ("Board") may authorize "inclusive tour charter service" (C. A. B.

Br., p. 2)[1] or "a type of charter called 'inclusive tour charter' " (ASTA Br., p. 3; Supp. Br., p. 2). Such questions assume that inclusive tours are charters. Since the statute involved—Public Law 87-528 (the "1962 amendment")—speaks of "charter" and not "inclusive tours", the basic question is precisely whether inclusive tours are charters in supplemental air transportation.[2]

Statement of the Case

A. *Introductory Summary.*

At issue here are five orders of the Board awarding supplemental air carriers certificates which authorize them to operate in conjunction with tour operators (travel agents) so-called "inclusive tours" between points in the United States and various foreign points served by respondents (543a-565a, 596a-607a, 1060a-1082a, 1097a-1106a, 1089a-1096a).[3] The orders permit these carriers to derive

---

[1] "C. A. B. Br." refers to pages of the Board's brief in No. 946. "Supp. Br." refers to pages of the brief of World Airways, Inc., et al., in No. 800. "ASTA Br." refers to pages of the brief of the American Society of Travel Agents ("ASTA") in No. 949. Numbers in parentheses followed by the suffix "a" refer to pages of Petitioners' Appendix; numbers in brackets followed by the suffix "b" refer to pages of the separate "Appendix to Petitioners' Brief Legislative Materials".

[2] The Court of Appeals answered this question in the negative and hence did not reach the question whether respondents were denied a hearing in connection with the inclusive tour authorizations granted by the Board in the transatlantic area (380 F. 2d 770, 774 (1125a) (2 Cir. 1967)). If this Court sets aside the judgment of the court below, respondents, for the reasons stated *infra*, pp. 73-81, respectfully submit that the Board's orders in the transatlantic area should be set aside because the orders were entered without a hearing.

[3] The term "inclusive tour", as the Court of Appeals noted (380 F. 2d at 771 n. 1 (1121a)), has on occasion been used synonymously

patronage for these tours by individual solicitation and individual ticketing of members of the general public.

The orders in question were issued under the 1962 amendment of the Federal Aviation Act (P. L. 87-528, 76 Stat. 143, 49 U. S. C. §1371(d) and §1301(33)). That amendment expressed a clear-cut Congressional policy decision that supplemental air carriers ("Supplementals") were not to engage in individually ticketed transportation but were to be confined to "charter trips in air transportation . . . to supplement the scheduled service" which regular route carriers such as respondents are authorized to provide (49 U. S. C. §§1371(d), 1301(33)).

The certificates awarded the Supplementals, however, were not so limited; engrafted upon the charter authority in each certificate was the further grant "(including inclusive tour charter authority)" (1083a, 1086a, 1107a, 1113a, 1116a). New regulations adopted as part of the Board's orders made it clear that travel agents who became "tour operators" by contract with the Supplementals would enjoy Board exemption as "indirect air carriers" for the sole purpose of effectuating the inclusive tour authority granted the Supplementals. Respondents accordingly challenged, in the Court of Appeals, the Board's orders and regulations and the certificates issued to the Supplementals, insofar as inclusive tour authority is concerned. That court, after

---

with "all-expense" or "package" tours. The Board used the term "inclusive tour" designedly, however, because the Board's orders require only that air and surface transportation (if any) and some hotel accommodations be included in the tour price, which may be as low as 110% of respondents' lowest fare (including discount) applicable between the same points (417a). None of the other land arrangements, meals and sightseeing ordinarily part of an "all-expense" or "package" tour need be included, despite petitioners' contentions here (C. A. B. Br., p. 2 n. 2; Supp. Br., p. 4; ASTA Br., p. 4 and n. 3).

reviewing the legislative history of the 1962 amendment, held that "the Board lacked the power to authorize 'inclusive tours' and that the challenged provisions should be stricken from the certificates awarded to the intervening carriers [Supplementals]" (380 F. 2d at 772 (1121)a)).

B. *The Parties*

Respondents, Pan American World Airways, Inc. ("Pan American"), Trans World Airlines, Inc. ("TWA"), and American Airlines, Inc. ("American"), have been scheduled air carriers for over three decades. Since enactment of the Civil Aeronautics Act in 1938[4] they have been continuously engaged in the transportation of persons, property and mail by aircraft pursuant to certificates of public convenience and necessity issued to them under the Act.

Respondents and other scheduled air carriers alone are authorized by statute to solicit and ticket individual members of the general public for travel in the transatlantic, foreign and overseas areas they are certified to serve (49 U. S. C. §1371). A substantial portion of these carriers' revenue is derived from the sale of all-expense and other tour air travel to the general public through travel agents (728a).[5]

The Supplementals including petitioners in No. 800 are themselves, or are successors to, carriers once known as

---

[4] 52 Stat. 977, as amended, 49 U. S. C. §401, now the Federal Aviation Act ("Act").

[5] *E.g.*, approximately 13% of Pan American's passenger revenues in the Pacific area is derived from all-expense tour passengers (35a-36a). As pointed out in ASTA's brief, travel agents promote and sell from 75% to 90% of all international air transportation originating in this country (ASTA Br., p. 3).

"non-scheduled", or "irregular" air carriers. Their authority is derived entirely from the 1962 amendment,[6] which limits them to the performance of charter transportation (and not individual ticketing) that will supplement the service offered by respondents and other scheduled air carriers (49 U. S. C. §§1301(32), (33), 1371(d)(3)). Pursuant to their charter authority (excluding the inclusive tours challenged here) the Supplementals perform extensive services in the air transportation of both persons and property for the military and for commercial and other organizations of all types.[7]

C. *The Orders Set Aside*

The five orders set aside by the court below granted not only charter authority but added "(including inclusive tour charter authority)" in the certificates issued to the Supplementals. The Board's regulations adopted as an integral part of the orders create a class of travel agents ("tour operators") authorized in conjunction with the Supplementals to sell inclusive tours by means of direct solicitation and individual ticketing of the general public. This is done by what is called a "charter" of the aircraft by a Supplemental to the tour operator (although the aircraft

---

[6] P. L. 87-528, enacted July 10, 1962, 76 Stat. 143 (*infra*, p. 13).

[7] Their operations in recent years have been very successful. For instance, in the 12 months ending June 30, 1967, World Airways, Inc. had total operating revenues of $57 million, up $19 million from the previous year. Capitol International Airways, Inc. had operating revenues of $33 million. Trans International Airlines, Inc. had operating revenues of $29 million. Saturn Airways, Inc. had operating revenues of $26 million. The operating profit margin of the Supplementals for this period was 15.7%. The operating profit margin of the certificated route air carriers was 11.8% (*C. A. B. Air Carrier Financial Statistics*, June, 1967; *C. A. B. Air Carrier Analytical Charts and Supplemental Carrier Statistics*, June, 1967).

is always under complete control of the Supplemental and operated entirely by its personnel) and the grant by the Board of exemption to the tour operator to act as an indirect air carrier.

As such, the orders violate the terms of the 1962 amendment limiting Supplementals to charter service and the express restriction against their operation of inclusive tours unequivocally set out in the legislative history of that statute. The orders also violate the express terms of the 1962 amendment since they sanction individual ticketing of the general public by Supplementals and thus permit operations which substitute for, and do not "supplement", respondents' services.

The orders set aside arose out of two separate proceedings conducted by the Board: (1) the *Transatlantic Charter Investigation* (Docket 11908) originally commenced in November 1960 and re-opened in April 1964 as *Reopened Transatlantic Charter Investigation* (same Docket 11908), and (2) *The Supplemental Air Service Proceeding* (Docket 13795) instituted in March 1964.

Order No. E-24237 (543a-565a), issued in the *Supplemental* proceeding, and Order No. E-24242 (1097a-1106a), issued in the *Reopened Transatlantic* proceeding, granted new certificates to certain of the Supplementals[8] to engage in "supplemental air transportation (including inclusive tour charter authority)", in foreign and overseas areas served by respondents (566a, 569a, 581a, 587a, 590a).

Order No. E-24240 (1060a-1082a), issued in the *Reopened Transatlantic* proceeding, provided for amendment of the

---

[8] American Flyers Airlines Corp.; Trans International Airlines, Inc.; World Airways, Inc.

outstanding final certificates of two Supplementals[9] to add "inclusive tour charter authority" to the charter authority previously granted. That order not only granted inclusive tour authority which was beyond the power of the Board but amended certificates without a hearing in contravention of the Act.

Order No. E-24242 (1097a-1106a) relied on Order No. E-24240 (1060a-1082a) in incorporating inclusive tour authority in the charter certificates issued to additional Supplementals (1100a). The sole basis of both these orders is a previous record completed before the original certificates were granted—and on the basis of which inclusive tour authority had been denied—and "Form 41 reports and other data of which we [the Board] may take official notice", without specification of the portions of the reports and the other data so noticed (Opinion and Orders Nos. E-24240, 24241 (1077a, n. 24)).[10]

Order No. E-24238 (596a-607a), issued in the *Supplemental* proceeding, and Order No. E-24241 (1089a, 1096a), issued in the *Reopened Transatlantic* proceeding, adopted regulations respecting "inclusive tours" previously referred to (*supra*, p. 5; see also *infra*, pp. 37-41).

D. *The Regulatory Problems Created by the Supplementals' Activities Which Necessitated the 1962 Amendment*

The close of World War II brought a substantial number of so-called "nonscheduled", "irregular" or, as known today, "supplemental" air carriers into commercial aviation.

---

[9] Capitol Airways, Inc.; Saturn Airways, Inc.

[10] Form 41 reports are detailed accounting reports of operations and of financial condition and investment, filed with the Board monthly, quarterly, semi-annually and annually by each air carrier.

Previously the Board had granted blanket exemptions issued under Section 416(b) of the Act to such non-certificated operators. These relieved those carriers from obtaining certificates of public convenience and necessity and from complying with certain statutory provisions and regulations. The postwar influx of large, transport-type aircraft and flight personnel, however, created enforcement problems arising from the devices employed by the Supplementals to divert passengers from the certificated carriers. The pre-1962 history of the Supplementals reflects their constant endeavor to engage in individually ticketed operations without certification in violation of the Act and the Board's regulations and orders. The Board's efforts to prevent the Supplementals from usurping the functions of the certificated carriers proved largely ineffectual.[11]

Essential to an understanding of the limited authority the Supplementals subsequently derived under the 1962 amendment is a clear picture of the operations they conducted and the authority the Board purported to give them before 1962. That authority, generally speaking, confined them to infrequent and irregular interstate and overseas air transportation of persons and property (and foreign

---

[11] The "combine" device cited as a principal abuse in the Board's brief (C. A. B. Br., p. 10 n. 9) was but one of many schemes thought up by these carriers to enable them to conduct the equivalent of certificated operations. Many of these schemes involved the use of ticket selling activities by travel agents and others (see, *e.g., Twentieth Century Airlines, Inc., et al., Compliance Proceeding*, 21 C. A. B. 133, 135, 192-193 (1955), affd. *sub nom. North American Airlines, Inc.* v. *Civil Aeronautics Board*, 240 F. 2d 867, 870 (D. C. Cir. 1958), cert. den. 353 U. S. 941 (1957)); *Large Irregular Air Carrier Investigation*, 28 C. A. B. 224, 464 (1959), affd. *sub nom. Great Lakes Airlines, Inc.* v. *Civil Aeronautics Board*, 294 F. 2d 217 (D. C. Cir. 1960), cert. den. 366 U. S. 965 (1961); *Air America Enforcement Proceeding*, 18 C. A. B. 393, 400 (1954).

air transportation of property only) and planeload charter operations (56a-57a). In granting such authority (later set aside by the courts) the Board "had never authorized inclusive tour authority for the supplementals" (see *American Airlines, Inc.* v. *Civil Aeronautics Board,* 365 F. 2d 939, 946 (D. C. Cir. 1966)). Indeed, as ASTA acknowledges (ASTA Br., p. 9), "[t]he inclusive tour charter concept, whereby a tour operator sells tours utilizing the charter for the to-and-from transportation element of the tour was not then known in the air travel industry in this country" (see also ASTA Br., p. 18; Supp. Br., p. 22).[12] Indeed, the Board's regulations specifically prohibited travel agents from soliciting individual members of the general public (the essential feature of the inclusive tour authority granted by the orders under review).

---

[12] Thus there was no "preexisting authority . . . to operate ITCs [inclusive tour charters]," as the District of Columbia Court was led to believe and as ASTA is now trying to convince this Court (ASTA Br., p. 23).

The Board had consistently prohibited travel agents from partaking in the formation of groups and barred public solicitation for the formation of groups for purposes of charter transportation. 16 Fed. Reg. 2700 (1951), 14 CFR § 207.1(a)(2) (1952 Edition); 24 Fed. Reg. 4908 (1959), 14 CFR § 295.11(b) (Supplement to 1956 Edition); 25 Fed. Reg. 5323 (1960), 14 CFR § 295.11(b) (1961 Edition); 26 Fed. Reg. 3631 (1961), 14 CFR § 295.11(b) (1962 Edition); 29 Fed. Reg. 6005 (1964), 14 CFR § 295.11(b) (1966 Edition); 29 Fed. Reg. 13249 (1964), 14 CFR § 207.1 (1966 Edition). This consistent prohibition refutes the Board's contention here that it had "approached the inclusive tour concept" (C. A. B. Br., p. 18 n. 29).

The Supplementals' attempt to equate study groups with inclusive tours is also wide of the mark (Supp. Br., p. 38). So-called "study groups" are not, under the Board's regulations, *ipso facto,* affinity groups which may charter a plane. They are simply exempted *in the transatlantic area* from the affinity rule (14 CFR 295.2(k)). The Board has been very careful to define what a proper study group is (14 CFR 295.2(m)), and it is clear they are not just members of the general public as are purchasers of inclusive tours.

The *Large Irregular Air Carrier Investigation* instituted by the Board (C. A. B. Br., pp. 10-11) failed to resolve the regulatory problems created by the activities of the large irregular carriers and its end results were ultimately declared unlawful by the courts. In that case the Board's Bureau of Air Operations had proposed that the large irregular carriers be limited to charter operations and not permitted to "accept traffic from persons whose business, either directly or indirectly, is the formation of passenger groups from the general public, or the solicitation or sale of individual transportation services" (22 C. A. B. 838, 938 (1955)). The large irregular carriers sought in addition authority for "special-service flights", which the Board's Examiners described as "sales of transportation to individual members of the public on an individual ticket sale or individual waybill basis where the service offered is of a special character distinguishing it from the regularly scheduled services" (*ibid.* at 937).

In their decision of March 29, 1955, the Examiners recommended permitting the large irregular carriers an unlimited number of charter flights and three "special service" flights per month. The Board, however, determined to give these carriers, by exemption, not only charter authority but also individually ticketed or individually-waybilled authority not to exceed 10 trips per month in the same direction between any single pair of points.[18] The Board thought this limited individual ticketing authority would fill the need for special service authority and refused to

[18] The charter authority so conferred was, of course, that which had been long established in air transportation. The "inclusive tour" concept was not employed in the air travel industry as an element of charter, as ASTA and the Supplementals concede (ASTA Br., pp. 9, 18; Supp. Br., p. 22).

grant the latter authority (*ibid.* at 853 and 857; see also 28 C. A. B. 224, 487 (1959)).

It should be noted that throughout the Board proceedings "charter" was used in contradistinction both to "individually-ticketed" authority and to authority to accept traffic "from persons whose business, either directly or indirectly, is the formation of passenger groups from the general public, or the solicitation or sale of individual transportation services" (*ibid.*, p. 938).

The Board's order permitting operations by the Supplementals on an exemption basis was set aside in 1956 in *American Airlines, Inc.* v. *Civil Aeronautics Board*, 235 F. 2d 845 (D. C. Cir. 1956), cert. den. 353 U. S. 905 (1957).

The Court having granted a stay of its order, hearings as to individual carriers then resumed. Meanwhile, the irregular carriers continued their "frequent and regular operations" without authority. In some instances letters of registration were revoked; in others the Board continued issuance of cease and desist orders in a largely unsuccessful effort to keep these carriers from engaging in illegal operations.[14]

Finally, on January 28, 1959, the Board granted certain irregular carriers certificates of public convenience and necessity which included the authority to operate an un-

[14] *United States Overseas Airlines, Inc., Enforcement Proceeding*, Order No. E-9643 (October 11, 1955); *Twentieth Century Airlines, Inc., et al., Compliance Proceeding*, 21 C. A. B. 133 (1955), affd. *sub nom. North American Airlines, Inc.* v. *Civil Aeronautics Board*, 240 F. 2d 867 (D. C. Cir. 1958); *Aero-Peninsular Compliance Case*, 24 C. A. B. 469 (1957); *Hacienda Hotels-Motels, Rooms and Flight Reservations, Inc. and U. S. Aircoach*, 25 C. A. B. 741 (1957).

limited number of charters and no more than 10 scheduled individually ticketed one-way flights per month between any two points (28 C. A. B. 224). This grant of authority was set aside in *United Airlines, Inc.* v. *Civil Aeronautics Board*, 278 F. 2d 446 (D. C. Cir. 1960), vacated *sub nom.*, *All American Airways, Inc.* v. *United Airlines, Inc.*, 364 U. S. 297 (1960), the court holding that certificates of this type could not be lawfully issued.[15]

Just before the decision in *United*, the Board had sought legislation to permit the creation by certificate of a class of "limited service air carriers" (*i.e.*, Supplementals) whose certificates would contain such limitations as were necessary "to assure that the service offered thereunder does not exceed the authorization" (H. R. 7593; see also Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 86th Cong., 2d Sess. on H. R. 7593, p. 1).[16]

In view of the decision in *United*, the Board proposed a change in its bill. It now sought legislation which "would have granted the Board the authority which the court held it did not possess and which would have permitted the Board to authorize supplemental operations to continue along the lines of present operations" (H. Rep., p. 6 [32b]; see also Statement by Alan Boyd, Chairman of the Board, S. Hearings, p. 5 [217b], H. Hearings, p. 10

[15] See Supp. Br., p. 4. The Board is, therefore, in error when it contends that "the Board was authorized, as it previously had been, to evolve a definition of 'charter'" (C. A. B. Br., p. 17), insofar as this implies there was any legitimate basis for any of the Supplementals' operations at this time. This Court vacated the *United* judgment for the reason that legislation was being considered by Congress.

[16] The Board had unsuccessfully sought such legislation before.

[207b][17]). The Board did not seek by this legislation, as it now contends, power to authorize a type of operation the Supplementals were not then even trying to conduct.

In order to have time to consider the Board's suggestions Congress, in July 1960, enacted "temporary legislation" to permit the Supplementals to continue their *existing*, and previously held improperly authorized, operations pending hearings on permanent legislation proposed by the Board and the Supplementals (see P. L. 86-661, 74 Stat. 527).

E. *The Legislative History of the 1962 Amendment: Public Law 87-528*

Two months after the close of hearings in the *Transatlantic Charter Investigation* Congress on July 10, 1962 enacted P. L. 87-528, 76 Stat. 143. The measure enacted into law represented Congress' own handiwork and departed significantly from the legislative proposals submitted by the Board and the Supplementals. In summary, it established, for the first time, a legal basis for part of the authority the Board had theretofore attempted to grant to the Supplementals. It did not, however, empower the Board to permit all the activities the Supplementals had been engaged in or all the Board had tried to authorize. It gave "some, but not all, of the authority requested by" the Board (H. Rep., p. 6 [33b]). Basic to the new law was the concept that supplemental air transportation should thenceforth be

---

[17] "H. Rep." refers to House Report No. 1177, 87th Congress, 1st Session; "H. Hearings" refers to Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce on Limited Air Carrier Certificates, House of Representatives, 87th Congress, 1st Session; "S. Rep." refers to Senate Report No. 688, 87th Congress, 1st Session; "S. Hearings" refers to Hearings Before the Aviation Subcommittee of the Committee on Commerce on Supplemental Air Carriers, Senate, 87th Congress, 1st Session.

limited to *charter* operations as that term was understood in the aviation field.

The 1962 amendment also recognized that the Supplementals had in the past been permitted by the Board to engage in individually ticketed service. The statute therefore authorized the Board to continue authorizations to provide such service for a two-year phase-out period terminating in July 1964. Thereafter, except under certain unusual temporary conditions, the Supplementals were to be completely separated from air transportation involving individual ticketing of the general public.

1. *The Board's Legislative Proposals*

Following its abortive attempts in the 86th Congress, the Board sought authority from the 87th Congress to issue certificates of public convenience and necessity to the Supplementals containing limitations as to the type and extent of service they might render. Identical bills drafted by the Board were introduced in the Senate and the House (S. 1969 and H. R. 7318). Alan Boyd, Chairman of the Board, made clear the limited scope of the legislation sought. The purpose of the Board's bill was simply "to correct the deficiencies in the Board's legal authority which were found to exist by the court" (H. Hearings, p. 10 [207b]).

The Board's bill proposed the following definition of "supplemental air transportation":

> "(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service

so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to Sections 401(d)(1) and (2) of this Act."

The definition was identical to that proposed in the previous session and would have allowed the Board to certify Supplementals to perform on a permanent basis not only charter services but also individually ticketed transportation of the type the temporary legislation by Congress permitted.

Chairman Boyd made it clear that under the Board's bill charter would continue to have the same meaning it then had under the Board's regulations which prohibited sales to individual members of the general public (see Statement by Chairman Boyd to Senate Committee, S. Hearings, p. 26):

"Senator Monroney: They [the supplemental air carriers] would be certificated to fill in the heavy traffic period when seats might not be available on the other American aircraft?.

"Mr. Boyd: That is correct, sir, with the added proviso that *it would be subject to the conditions established by the Board providing for the homogeneity of the charter group*" (emphasis supplied).[18]

Chairman Boyd emphasized that the then-existing Board regulations were designed to prevent travel agents from soliciting the general public (*ibid.*, p. 29):

---

[18] Thus the Board did not, as the Supplementals now contend, tell "the House Committtee that supplemental carriers should be granted charter authority . . ., and that the matter of what constituted a charter should be flexible" (Supp. Br., p. 6).

"Mr. Boyd: . . . The regular route carriers have got to be protected. We can't just turn loose completely and permit charters to operate as we see it today on this no-holds-barred basis, because the result would be to put travel agents in the business of soliciting groups at the expense of the regular route operators.

"Senator Monroney: I can well understand that you could, through no-holds-barred on charters, very seriously threaten the integrity of the certificated route structure. Sometimes I question whether we do not go the extreme limits.

* * * * *

"Senator Monroney: With respect to international charters by supplementals can't the Board police those as well as they police domestic charters with respect to travel agents simply manufacturing the charter groups?

"Mr. Boyd: Well, we think we do."

The Supplementals also introduced a bill (H. R. 7512). Clayton L. Burwell, president of the Independent Airlines Association and Supplemental Air Carrier Conference, and attorney here for petitioner Trans International Airlines, Inc., explained to both Houses why the Supplementals sought legislation expressly providing for "unlimited charter operations." He testified that all-expense tours were not charter trips but he stated that the Supplementals sought to broaden the concept of charter in air transportation so as to include all-expense tours (*ibid.*, p. 111):

"Mr. Burwell: . . . it seems to me that it is well worth a look of the committee in the promotion of tourism and so on to take a look at the all-expense tour method of travel.

"Senator Monroney: Would that be on a charter basis, in your estimation?

"Mr. Burwell: I don't think it is technically—well, it is not a charter basis under the present Board rules. *Under the definition that we would like to get it would be.*

"Senator Monroney: What I was getting at, would you recommend that as a charter, a full planeload that would have to go the whole trip, the whole tour, or would you want it on the exemption basis of so many round trips a month, or so?

"Mr. Burwell: We would like to have it as a charter." (Emphasis supplied.)

Chairman Boyd opposed the expanded authority requested by the Supplementals. He explained why in an exchange with Senator Cotton (*ibid.*, p. 36):

"Senator Cotton: What would be your reaction if the bill were to specifically authorize unlimited planeload charter service in addition to giving the Board discretion as to additional types of service?

"In other words, to open the door for charter service and retain the Board's discretion on individual ticketed service and other service.

"Mr. Boyd: I think we would have to oppose that, Senator.

• • • • •

"This term 'unlimited charter service', as we understand it, would create a real monster in that it would permit individuals, presumably travel agents to go out and solicit people, individuals, to join in a group to fly charter instead of taking trips on individual ticketed flights. We think this could have a very dangerous impact on regular route carriers."

It was also in opposition to such "unlimited charter authority", and in favor of giving the Board power to prevent the Supplementals from operating individually ticketed services under the guise of charters, as some had so often tried to do in the past—and not, as petitioners claim, in support of complete flexibility for the Board (*cf.* Supp. Br., pp. 6-10, 44)—that Stuart Tipton, President of the Air Transport Association, made his comments quoted by the Supplementals here. Tipton's concern was that the bill should not tie the Board's hands so that it would be unable to prevent the Supplementals from abusing the charter authority which they would receive pursuant to the proposed legislation. Critical portions of Tipton's comments make this crystal clear (H. Hearings, pp. 239-240):

> "The problem is basically a regulatory one. It is essential to maintain standards of charterworthiness which safeguard against fictitious charters being set up by ticket agents or others who sell individual tickets to the general public. . . .
>
> • • • • •
>
> "It [H. R. 7512] is unclear and, indeed, dangerous. It fails to incorporate any controls to prevent fictitious charters which would actually entail sale of individual tickets to the general public."

And, as Tipton pointed out to the Senate (S. Hearings, p. 278):

> "The basic guideline being this clear, an appropriate function of the Board is to prescribe regulations, as needed from time to time, to prevent *abuses* through ticket agents, solicitation of the general public, or other devices for conducting individually ticketed op-

erations under the guise of 'charter'. . . ." (Emphasis supplied.)[19]

2. *The Senate Committee's Modification of the Bills Introduced*

The Senate Committee was not satisfied with the Board's bill and proceeded to modify it. "Charter service" was defined in Section 101(13) of the First Print of the Senate Committee's bill as

> "air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation of persons to the general public."

Section 401(e) of this print provided, in pertinent part:

> "A certificate issued under this Section to engage in supplemental air transportation shall authorize the carrier to provide charter service and may also authorize the carrier to provide individually-ticketed or waybilled scheduled service."[20]

The Committee drew a clear distinction between "charter" and "individually ticketed" service.

---

[19] See also statement quoted at page 9 of ASTA's brief.

[20] Committee Print, S 1969, July 10, 1961.

The definition of charter service appearing in the First Print was modified in the Second Committee Print prepared a few days later.[21] At the end of the definition was added

> ". . ., other than in connection with all-expense-paid tours."[22]

Committee Print Three made no change in this addition but Print Four[23] provided that only a member of a *group* on an all-expense paid tour would be permitted to fly on a charter by changing the language to read:

> ". . ., other than as a member of a group on an all-expense paid tour."

These changes were in substance contained in the final version (Committee Print Five) reported by the Senate Committee.[24]

The Senate Committee bill as reported thus would have expanded the meaning of charter in air transportation so as to permit the Board to authorize all-expense tours by groups as charters. If defined as charters, inclusive tours would then not be subject to another requirement in the Senate bill that no certificate for individually ticketed ser-

---

[21] Committee Print No. 2, S 1969, July 14, 1961.

[22] Noteworthy, although petitioners would ignore the distinction (*e.g.*, C. A. B. Br., pp. 6, 12), is that the Senate print referred to "all-expense paid tours" and not "inclusive tours."

[23] Committee Print No. 4, S 1969, July 24, 1961.

[24] Committee Print, S 1969, July 29, 1961.

vices could be issued if it resulted in significant diversion from the scheduled carriers.[25]

The Senate Committee thought that its bill "incorporated the common law definition of charter" and stated in its Report that "an all-expense-paid group tour" could be offered to individual members of the public by a carrier or travel agent and still conform to "the traditional concept of charter". Petitioners emphasize these statements with the implication that according to the Senate Committee Report all-expense-paid tours are included within the meaning of "charter trips" as used in air transportation. The Senate Report, of course, nowhere says that all-expense-paid tours are included within the meaning of charter trips in air transportation. As is apparent from the balance of the legislative history, and, as pointed out more fully below, the exact contrary is the case.

3. *The House Committee's Modifications*

While the Senate bill would have given the Board authority to authorize the Supplementals to engage in all the activities invalidly permitted heretofore and all-expense tours in addition, the House Committee felt that the Board should not even be permitted to authorize all the operations the Board had previously attempted to allow, as the Board

---

[25] This history of the development of the Senate bill, and particularly the change in the definition of "charter" after the First Print, completely refutes the argument of the Board here that the Senate only included this proviso in line with its attempt to limit individual ticketing and was not a grant of authority which the Board would otherwise have lacked (see C. A. B. Br., pp. 14-15).

The Board's inclusive tour regulations, in addition to not meeting the requirement of the Senate bill for an all-expense tour, do not meet the added requirement included in the Senate proposal that all-expense tours be sold only to one who is "a member of a group."

was requesting. As its Report pointed out (H. Rep., pp. 6-7 [32b-33b]):

> "The committee is reporting herewith a substitute for H. R. 7318, a bill drafted by the Civil Aeronautics Board to permit the granting of limited certificates to supplemental air carriers, authority which the U. S. Court of Appeals for the District of Columbia has held the Board does not have under existing law. H. R. 7318, *as introduced,* would have granted the Board the authority which the court held it did not possess and *would have permitted the Board to authorize supplemental operations to continue along the lines of present operations.*
>
> "The committee substitute, drafted after careful consideration by the full committee and the Subcommittee on Transportation and Aeronautics, *would give the Board some, but not all, of the authority requested by it.* The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate supplemental carriers, especially in the field of individually ticketed operations." (Emphasis supplied.)

The House Committee bill thus provided:

> "(33) 'Supplemental air transportation' means *charter trips in air transportation,* other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act." (Emphasis supplied.)

The House Committee bill in addition sharply distinguished between "charter" and "individually ticketed services". It permitted the Supplementals to engage in the latter in two limited circumstances: (1) for a two-year period after enactment the Board could permit the Supplementals to perform certain individually ticketed services in order "to permit an orderly transition to all-charter operations"; and (2) the Board was given authority to issue a special operating authorization to a Supplemental authorizing it to engage in air transportation between two points for a maximum period of 90 days when there is a temporary requirement for such air transportation either because the capacity being offered by certificated air carriers is temporarily insufficient to meet the requirements of the public or the Postal Service or because one or both points is not regularly served by any air carrier. Only in these limited situations would Supplementals be authorized to engage in individually ticketed service.

As explained by the House Committee (H. Rep., pp. 10-11 [41b-42b]):

> "The basic concept written into the substitute bill reported herewith is that the supplementals essentially are charter operators. The committee recognizes that under special circumstances and in temporary situations, individually ticketed supplemental service fills a definite need in our transportation system. The committee recognizes also that individually ticketed supplemental service must necessarily be subject to close scrutiny by the Civil Aeronautics Board to make certain that such service is restricted to supplemental needs and does not provide unfair or discriminatory competition to scheduled carriers, . . ."

Unlike the Senate bill, the House bill did not expand the established meaning of "charter" in air transportation by defining "charter service" to include all-expense paid group tours.

The House Committee "came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, *subject to the limitations contained in the reported bill*" (H. Rep., p. 11 [42b]; emphasis supplied).[26] The House thus clearly recognized that the Board's authority to define charter service was limited and did not include the power to change the established meaning and wipe out the distinction between "charter" and "individually ticketed service" expressly recognized in the House bill.

Representative Williams, the Chairman of the Subcommittee, pointed out (108 Cong. Rec. 12322, June 29, 1962 [230b]):

> "The all-expense tours that were provided for in the Senate definition were not accepted by the House, . . ."

Representative Harris, Chairman of the House Committee, explained further (108 Cong. Rec. 12322, June 29, 1962 [230b, 231b]):

> "The Senate proposed to change the well established meaning of 'charter.' The House objected to changing it."

* * * * *

[26] The italicized words are omitted entirely by ASTA in its summary of the House Committee Report (ASTA Br., p. 24). The House did not, as petitioners would have this Court believe, leave the definition of "charter" entirely to the Board (C. A. B. Br., p. 7; ASTA Br., p. 24; Supp. Br., p. 43). It simply wanted the Board to have sufficient authority to "deal effectively *with any attempt* to *distort* the charter concept" (C. A. B. Br., p. 7; emphasis supplied).

"The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the bill, as passed by the House, contained no definition of charter."

See also statement of Representative Collier, a manager of the bill (108 Cong. Rec. 12324, June 29, 1962 [232b-233b]).[27]

The House Committee further determined that the Board should include "limitations" in the certificates of the Supplementals so as "to assure that the services are

[27] This is the "identical statement" referred to in the brief of the Supplementals (Supp. Br., pp. 17, 49). The statement was prepared by Chairman Harris (108 Cong. Rec. 12322 [231b]). Representative Collier apparently was so strongly in agreement with the comments of the Chairman of his Committee that he felt compelled to repeat them.

limited to supplemental air transportation" even in the area of the charter operations to which the Supplementals were confined under the House bill (Section 401(e); see also, H. Rep. p. 18 [58b]).

Chairman Harris indicated clearly in describing the Committee bill to the House, as Senator Monroney had indicated to the Senate (107 Cong. Rec. 17163, August 28, 1961), that charter operations and individual ticketed services were two entirely distinct things. He explained (107 Cong. Rec. 20081, September 18, 1961):

> "Under this reported bill, Mr. Speaker, the Civil Aeronautics Board is authorized to issue certificates to supplemental air carriers to conduct, first, charter operations. Second, the Board would be authorized to permit carriers to furnish individual ticketed services on a temporary basis in order to meet certain situations where additional air transportation is needed such as is required for holiday seasons or resort transportation and similar cases."

Representative Williams spoke in a similar vein (107 Cong. Rec. 20082, September 18, 1961).

Chairman Harris made clear that any need for holiday travel, the alleged need met by all-expense tours (see ASTA Br., p. 4), would be met by another provision of the House bill (107 Cong. Rec. 20081, September 18, 1961). Representative Williams explained that the reported bill would (107 Cong. Rec. 20082, September 18, 1961):

> "Second. Permit the Board to authorize the supplementals to provide individually ticketed service on a temporary basis in situations where additional air transportation is needed. These situations, for ex-

ample, would include holiday and vacation travel, and such things as transportation to summer resorts or vacation spots where transportation facilities are deficient."

4. *The Conference Committee's Action*

Because of the conflict in the bills reported to and passed by the respective Houses, a conference became necessary. But there was no time for such action before adjournment. After Congress reconvened, modifications in the legislation were introduced to meet problems of air safety of the Supplementals which had been highlighted by a recent air crash (see ASTA Br., pp. 13, 22).

When the modified legislation was introduced on the floor of the Senate, further discussion ensued about "all-expense tours." Senator Morton, a member of the Senate Subcommittee and a manager of the bill, expressed the first doubts as to all-expense tours before that body (108 Cong. Rec. 3706, March 8, 1962):

> "There is one area in the proposed legislation, however, that raises grave doubts in my mind. This is the grant of power to the CAB to permit the supplemental carriers to carry individually ticketed traffic and all-expense-paid-tour traffic." [28]

The House began consideration of the modified bill a few days later, March 14, 1962 (108 Cong. Rec. 4049). The difficulties that the House had with the Senate bill, particularly with the provision for all-expense tour authority,

---

[28] This statement, incidentally, was not made just after the Congress learned that the Bureau of Economic Regulation would seek all-expense tour authority, as ASTA would have this Court believe (ASTA Br., pp. 18, 22), but three months earlier.

were immediately brought out into the open. Representative Walter[29] stated (108 Cong. Rec. 4050, March 14, 1962):

> "The part of the Senate bill which was written last summer, however, still has several undesirable features. The worst of these is the one giving the Board power to grant broad individually ticketed authority to these carriers. That authority has been used by some of the nonskeds ever since the end of World War II. In every year since then—every year, mind you—at least one, and often several, nonskeds have been engaged in regular, continuous, flagrant violation of that authority."
>
> • • • • •
>
> "The Senate bill also has a definition of charter authority which would let a nonsked carry anyone, anytime—much more than even our main trunklines have authority to do—if only the carriage is part of a so-called all-expense tour. The result would be phony tours in which the only significant item was the air fare...."

Representative Hemphill, a member of the House Committee, also expressed his views on the all-expense tour authority set out in the Senate bill (108 Cong. Rec. 4052, March 14, 1962):

> "It is beyond dispute that the individually ticketed authority which the Senate bill would provide is potentially much broader than the past unenforceable system. Moreover, the Senate would grant the nonskeds the right to carry so-called all-expense-paid tour business. In the past, adequate regulation failed be-

---

[29] Representative Walter, moreover, was a proponent, not an opponent, of the final bill (as the Supplementals contend, Supp. Br., p. 48). See 108 Cong. Rec. 12325 (June 29, 1962).

cause it was impossible for the CAB to police each flight conducted by the nonskeds. Under the Senate bill, the CAB would be required to police each passenger to determine whether he was a bona fide all-expense-paid tour passenger. This is clearly less workable than the already proven unworkable system."

The Conference Committee adopted the provisions of the House bill on all matters here relevant, omitting both the Senate Committee's definition of charter and the authority in the Senate bill for the issuance of certificates for other than charter transportation. (See Conference Report, p. 14 [199b-200b]; C. A. B. Br., pp. 7, 17; ASTA Br., pp. 11-12; Supp. Br., p. 14). Also omitted was the Senate provision that certificates authorizing individually ticketed service should be so limited as to prevent significant diversion from scheduled carriers. The Conference Committee Report states that the Conference bill (Conference Report, p. 14)

"adopts the provisions of the House amendment with respect to the prohibition of individually ticketed and waybilled services on a permanent basis."

It also states that after the 2-year period during which individually ticketed services could be continued (*ibid.*)

"supplemental air transportation would be limited to all-charter operations, except for limited individually ticketed service which may be authorized by the Board on a temporary basis."

The Conference Committee Report thus also distinguishes between charter operations and individually ticketed services. And it confirms that, with the exceptions noted, individually ticketed services are prohibited under

the Conference bill. Since inclusive tours are individually ticketed services, they are prohibited by the Conference bill, which is the 1962 amendment.

Senator Monroney, Chairman of the Senate Subcommittee, described the Conference Report as follows (108 Cong. Rec. 12282-12283, June 29, 1962):

> "I regret to have to report to the Senate that the bill as agreed upon in conference departs quite substantially from the economic provisions which the Senate has endorsed on two occasions in passing this bill. The conference report contemplates a supplemental air carrier industry much more limited in terms of its role in air transportation than that which was envisaged by the committee and endorsed by the Senate.
>
> "The conference report adopts the provisions of the House bill limiting the permanent role of these carriers to charter service. The Senate bill had provided that the Board might issue certificates to these carriers permitting them to engage in individually ticketed operations as might be required by public convenience and necessity, but required the Board to impose such limitations on certificates as are necessary to insure that individually ticketed operations did not result in a significant diversion of traffic from the regularly certificated route carriers.
>
> "This amendment was included by reason of the diligence of the distinguished Senator from New Hampshire [Mr. Cotton].
>
> "I am convinced that the provisions of the Senate bill would have produced a stronger supplemental industry, one better able to serve the needs of the Nation in both peace and war. However, it became apparent

that the only way legislation could be obtained was by accepting the House provision limiting these carriers to charter operations."

Further explanation of the action of the Conference Committee appears in a statement by Senator Cotton, a manager of the bill and member of the Conference and Senate Subcommittees (108 Cong. Rec. 12284, June 29, 1962 [236b]):

"I do wish to comment briefly on one aspect of the conference committee's action. The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on charter flights to individual members of the general public who were on all-expense-paid tours. I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board."

To this Senator Scott, another member of the Senate Subcommittee and of the Conference Committee, added the following (108 Cong. Rec. 12284-12285, June 29, 1962 [237b-238b]):

"The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' . . .

• • • • •

"The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air transportation. There should be no question about that. The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have per-

mitted travel agent charters for all-expense tours. Such charters have no place in air transportation. . . ."

Respondents do not question that the Senators were aware that the Board was considering the idea of permitting the Supplementals to operate all-expense tours. Senator Thurmond, another Committee member, made this crystal clear (108 Cong. Rec. 12285, June 29, 1962 [239b]).

"I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressely rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision.

"Therefore, I want to emphasize that the CAB must continue its historic charter definition. Any erosion of this concept would defeat the purpose of this supplemental legislation, and would undermine the congressional intent that the supplementals, after the 2-year phasing out period, shall not conduct any individually ticketed business, but, rather, shall concentrate exclusively on full planeload charters.

"Air transportation has suffered from the abuses of individually ticketed operations. The law violations in this area have all too frequently extended to infractions of safety provisions as well. It is for this reason that I want to emphasize the insistence of Congress that supplemental operations shall be confined to full planeload charter operations exclusively."

The Board (C. A. B. Br., p. 21) makes much of Senator Monroney's statement (108 Cong. Rec. 12283, June 29, 1962 [235b]):

"The charter definition contained in the Senate version of the bill was omitted from the bill agreed to by the conferees. This was done unilaterally by the Senate conferees because of the decision which had been made on individually ticketed authority. . . ."

The Board incorrectly implies that by his statement Senator Monroney was saying that the Board had been given a sufficiently wide "latitude in defining charters" so that it could reinstate into the bill the all-expense tours the conferees had just removed. But what the Senator actually seems to have been saying is that all-expense tours were omitted from the Senate bill because they involved individually ticketed authority and the conferees had decided the Supplementals should have no individually ticketed authority.

Moreover, the Board did not quote all that Senator Monroney said. In the sentences immediately following it is clear that the attention of the Senate conferees was focused on the question of permitting the Board to authorize split charters—which, of course, did not involve any individually ticketed authority (108 Cong. Rec. 12283, June 29, 1962 [235b-236b]):

"The charter definition would have operated to prohibit the granting of split charters—that is, the transportation of more than one charter group in a single aircraft. We felt that the Board should be left free to determine on its merits the desirability of permitting the supplemental carriers to conduct such charters, in view of the fact that the charter business will ultimately represent the only source of revenue for these carriers. Another reason why we desired to leave the Board sufficient flexibility so that it might permit split

> charters was the effort of the Defense Department to encourage these carriers to acquire modern turbine-powered equipment for the civil reserve air fleet. The size of such aircraft makes it virtually impossible to find a charter group sufficiently large to fill an entire aircraft."

The flexibility he was referring to was sufficient flexibility to authorize split charters, not to change the meaning of charter to include individually ticketed service.

In view of the crucial importance the issue of authorizing all-expense tours had assumed, and the statements of three Senators on his Committee that such authority was not permitted by the Conference bill, one would have expected Senator Monroney to have expressed his disagreement, if, in fact, he did disagree with that construction. However, in contrast to his statement on split charters, nowhere is there any statement by him suggesting that the Board should be free to determine the desirability of permitting Supplementals to carry all-expense tours.

Senator Scott's explanation of the omission of the definition of "charter" sheds much further light (108 Cong. Rec. 12284, June 29, 1962 [236b-237b]):

> "While the bill thus contemplates only charter services by the supplementals, it does not define 'charter'. It does not need to do so. The act has, since 1938, authorized charter trips by scheduled airlines without regard to the points named in their certificates under Board regulations. The meaning of charter in air transportation has become well established law, and it would have been superfluous to write it into the present bill.
>
> • • • • •

"Another essential element is that the person who charters an airplane cannot resell the space to individuals or solicit the general public to buy space. This is necessary to prevent breakdown of the regulatory system, and most particularly the rate regulatory system. If this were not one of the rules, a travel agent could charter an airplane, and then offer the seats to the general public at less per head than the tariff fares the airplane must observe as to each passenger."

The members of the House Committee were also concerned lest the omission of a charter definition be misunderstood. Representative Williams stated (108 Cong. Rec. 12322, June 29, 1962 [230b]):

"The Senate receded and accepted the position of the House on that provision. So, there is no statutory definition of 'charter' in the bill. That definition will be the one which is presently in effect under a regulation of the Civil Aeronautics Board. The all-expense tours that were provided for in the Senate definition were not accepted by the House and the Senate receded and concurred in our position on that, also."

Chairman Harris, who presented the Conference Report to the House, explained (108 Cong. Rec. 12320, 12321, 12322-12323, June 29, 1962):

"As is well known, the most difficult problem was that of transportation of individually ticketed passengers. The bill as passed by the House last September 18 sought to limit the supplemental carriers to charter operations, with no individually ticketed or individually waybill authority except in certain limited emergency situations.

"Briefly, the supplemental air carrier bill passed by the House proposed to first, authorize the Board to issue certificates to supplemental carriers to conduct charter operations; second, authorize individually ticketed service on a temporary basis for special situations under regulations of the Board; • • • ."

• • • • • •

"The bill agreed to in conference adopts the House provisions prohibiting individually ticketed and individually waybilled services on a permanent basis."

Chairman Harris then went on to point out that the bill as passed by the House contained no definition of charter for the reasons already noted (*supra*, p. 25). He explained why the Senate bill had contained such a definition (108 Cong. Rec. 12323, June 29, 1962 [232b]):

"The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because *the Senate proposed to modify the established concept of charter in order to permit carriage, as charter, of 'a group on an all-expense paid tour'*. The Senate conferees having receded from insistence *on the all-expense-paid tour exception,* it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy. (Emphasis supplied.)

• • • • • •

"[T]he bill reported by the conferees contains no definition of charter because the Senate receded. The language the gentleman was concerned about is not in the bill.

"A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft

for a particular purpose by a single engaging party. Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language. As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter.

* * * * *

"The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the remainder of the Senate definition was superfluous since it merely stated established law and policy."

Both Houses agreed on this version prohibiting all-expense tours. The final version, as did earlier versions, drew a sharp distinction between "charter" and "individually-ticketed" services. Generally, the Supplementals were limited to charter operations. Individually ticketed travel was permitted only under very limited circumstances, which no one claims to be a basis for the inclusive tour authority granted by the Board.

F. *The Board's Inclusive Tour Regulations*

As noted above (*supra,* p. 7), the Board, in order to effectuate the inclusive tour authority granted the Supplementals, adopted certain regulations (Orders Nos. E-24238, E-24241, 596a-607a, 1089a-1096a). Far from insuring any significant difference between inclusive tours and respondents' individually-ticketed services (Supp. Br., p. 24), the regulations simply highlight how this inclusive tour

authority duplicates such services of respondents. Essentially, the regulations require nothing more than round-trip air transportation, limousine service from the airport to the hotel (surface transportation) and hotel accommodations at the three places (stops) which qualify the trip as a "tour"—all for a price only slightly above the lowest point-to-point air fare of the petitioners.[30] There is no requirement that the "tour" include meals.[31] There is no requirement that the "tour" include sightseeing activities.[32] There is no requirement that the "tour" participants stay at the same hotel.[33] There is no requirement that the participants engage in *any* "group" function. The only time that a tour participant even has to see any of the persons assembled from the general public by the travel agent for this "charter" is on the airplane to and from points of origination and destination.

---

[30] Specimen advertising of the Supplementals is set forth in Appendix C. Such advertising shows that the Supplementals have extensively advertised the availability of the low cost transportation to individuals (see Appendix C, pp. C-1, C-2). Indeed, these "tour charters" have been advertised as allowing "individuals to fly at 'organizations' rates . . . at far less cost than before. So much less that Liberty [an agent] tosses in trips to the neighbor islands, superior hotels, sightseeing excursions, parties, even tips" (see Appendix C, p. C-5). And Berry advertises flights on World "at low charter prices," permitting the traveler to "See and do everything and save big money! And still enjoy Berry more-fun-for-your-money extras" (see Appendix C, p. C-3).

[31] Illustrative of "tours" where meals were not included are those approved by Orders Nos. E-23888 (July 1, 1966); E-24041 (August 4, 1966); E-24487 (December 7, 1966); E-24581 (December 29, 1966). See also Appendix C, pp. C-3, C-4, C-5.

[32] Illustrative of tours where sightseeing is optional are those approved by Orders Nos. E-23888 (July 1, 1966); E-24001 (July 22, 1966); E-24038 (August 3, 1966); E-24845 (March 10, 1967).

[33] Often they do not. See, *e.g.*, Appendix C, pp. C-4, C-5.

The seven days minimum for an "inclusive" tour is no restriction, since it is far less than the number of days spent by the average air traveler over respondents' international routes (25a-26a). The regulation minimum of three stops on an inclusive tour again places no meaningful restriction on such travel, since the average traveler on respondents' aircraft visits at least three countries in the transatlantic area and six in the Pacific area (25a-26a, 959a).

The information the Board requires for approval of a tour, *e.g.*, "name of hotel" (Supp. Br., p. 26), provides no significant basis for distinguishing inclusive tours from respondents' services.[34] Other requirements serve no better, many of them having been waived by the Board in practice. For example, the Board has approved an application for a change in itinerary filed a week after the tour *departed*.[35] Surety bond requirements (Supp. Br., p. 27) have often been waived,[36] as has the requirement that a tour application be submitted 90 days in advance.[37]

---

[34] The Board obviously will not disapprove an "inclusive tour" because it does not like the name of the hotel. Indeed, it has approved inclusive tours specifying a number of alternative hotels for the same stop. See, *e.g.*, Order No. E-25149 (May 15, 1967), approving application which included brochure annexed hereto as part of Appendix D, page D-1.

[35] See, *e.g.*, Order No. E-25246 (June 2, 1967).

[36] See, *e.g.*, Order No. E-26496 (March 11, 1968); Order Nos. E-24581 (December 29, 1966); Order No. E-24487 (December 7, 1966); Order No. E-26160 (December 21, 1967); Order No. E-24828 (March 7, 1967); Order No. E-25265 (June 7, 1967); Order No. E-24473 (December 2, 1966); Order No. E-25140 (May 12, 1967); Order No. E-25149 (May 5, 1967).

[37] See, *e.g.*, Order No. E-24586 (December 30, 1966); Order No. E-24386 (November 9, 1966).

The suggestion that the Board is strictly policing inclusive tour authority is belied by the fact that 1,250 inclusive tours have been approved since July 1966.[38] The national advertising of the Supplementals, directly appealing to the general public for patronage, and brochures filed in connection with inclusive tour applications show how un-"regimented" (ASTA Br., p. 25) is the travel involved and how it overlaps the very services offered by respondents to the public at large through travel agents.[39] As one brochure for an approved tour put it:

> "About Regimentation—There simply isn't any! You fly as a group, but once you arrive at your destination you do as you please" (Appendix D, p. D-4).[40]

---

[38] Annexed as Appendix B is a list of the inclusive tours approved since July 1966.

[39] Appendix D contains sample brochures filed with inclusive tour applications. Illustrative of lack of regimentation is a tour program for two tours to Hawaii, including stops at San Francisco and Las Vegas, jointly offered by Trans International Airlines, one of the petitioners here, and Male Travel Bureau and approved by the Board (Orders Nos. E-23886 (June 30, 1966), E-24001 (July 22, 1966), E-24038 (August 3, 1966), E-24845 (March 10, 1967)). Apart from accommodations and transfers to hotels, all activities are optional; indeed, extra charges are made for just about all of them, including an extra charge for meals not in-flight. Nothing is said about staying at the same hotels; at an extra cost other hotel space is available (Appendix D, pp. D-5, D-7).

A tour application filed jointly by Overseas National Airlines and Male Travel Bureau and approved by the Board (Orders Nos. E-23888 (July 1, 1966), E-24001 (July 22, 1966)) is another illustration. The brochure states "a choice of . . . Sightseeing Available in each city (at additional cost)" (Appendix D, p. D-77). The itinerary provides many leisure days in Las Vegas, Los Angeles, San Francisco and Hawaii with information as to what one might do with the time if one wishes but no more. Meals are not included.

[40] Brochure for tour application filed jointly by Overseas National Airways and American International Travel Service approved by the Board (Order No. E-25149 (April 7, 1967), modified in other respects Order No. E-25245 (June 2, 1967)) (Appendix

The regulations adopted by the Board do not in fact restrict but actually permit widespread solicitation and individual ticketing of the general public in contravention of the intent and purpose of the 1962 amendment (see *infra*, pp. 50-63). As the Court of Appeals held, moreover, they are immaterial to the question of the power Congress gave the Board.

G. *The Decision of the Court Below*

In making its decision that the Board lacked the power to authorize inclusive tours, the Court of Appeals recognized that the District of Columbia Court had reached a diametrically opposite result based on the same statute in *American Airlines, Inc.* v. *Civil Aeronautics Board*, 365 F. 2d 939 (D.C. Cir. 1966), in which an order of the Board relating to the domestic area had been reviewed.

The Court of Appeals considered the contention made by the Supplementals, but not by the Board,[41] that any review was barred by the decision of this Court in *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U. S. 103 (1948). The court noted that in *Waterman* (380 F.2d at 775 (1128a)):

> ". . . Petitioner did not challenge the regularity of the Board's proceedings and apparently raised no issue as to the Board's statutory authority; instead it attacked the correctness of the Board's findings and the adequacy of the evidence supporting them. . . ."

D, pp. D-1 to D-4). An advertisement for a "tour" under the auspices of these same two companies also emphasizes "Never Any Regimentation" (Appendix C, p. C-4).

[41] As shown *infra*, pp. 82-83, the Board's failure to raise *Waterman* below in connection with the question of statutory power was no mere oversight, but an expression of its view that review was proper.

It held, as had the District of Columbia Circuit before it in *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349, 352 (D. C. Cir. 1965), that (380 F.2d at 775 (1128a)):

> "... the *Waterman* case does not 'govern a situation where the action of the Board, before the matter reaches the President, is beyond the Board's power to act.'"

Having decided that question, the court considered carefully the contention that the Board had the power to include inclusive tour authority in the certificates of the Supplementals.

It reviewed the bill as originally proposed and recognized that the scope of the authority finally conferred on the Board was hammered out in the Conference Committee. It considered the Committee Reports on the bills proposed by the House Committee and the Senate Committee.[42] It correctly concluded therefrom that the Senate Committee bill would have *permitted*, but not required, the Board to authorize all-expense tours in charter operations by the Supplementals. It then went on to find that the House Committee bill would not have permitted such inclusive tours. It determined that, in refusing to accept the Senate bill and in accepting the House bill, the Senate conferees receded from the position of the Senate bill permitting inclusive tours and by so doing outlawed such tours as any part of the charter authority which might be granted to Supplementals. It also looked to the uniform statements of the floor managers, which it found were in conformity with the Committee Reports, that inclusive

[42] Indeed the Board recognizes here that the court did not look only to the debates in Congress (C.A.B. Br., p. 5).

tours were not within the authority contemplated by the bill as reported by the Conference Committee (and as finally enacted). In reaching its conclusion that inclusive tour authority was not granted to the Board, the court also recognized, as, indeed, all petitioners do here, the importance to Congress of maintaining the distinction between group and individually ticketed travel.

Petitions for rehearing and rehearing *en banc* filed by all the petitioners here were denied, but a stay of the order of the court below has been granted (1146a-1150a).

SUMMARY OF ARGUMENT

I.

In enacting the 1962 amendment "a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel." That amendment does not even refer to "all-expense tours" or "inclusive tours." Under the statute the Supplementals are limited to "charter trips in air transportation." Since "charter" is not defined in the statute it can only mean what was meant by "charter" in air transportation at the time the statute was amended.

As used in air transportation "charter" did not include all-expense or inclusive tours sold to individual members of the general public by travel agents. The Board's charter regulations had for years prohibited travel agents from soliciting the general public for the Supplementals under the guise of "charter" operations. The Chairman of the Board pointed this out to Congress in testimony on this very bill and said that charters would be subject to the Board's existing regulations as to the homogeneity of the charter group. The Supplementals' principal witness told

the Committee considering the bill that all-expense tours were not charters, but would be under the definition the Supplementals sought (but failed to get). ASTA concedes that the all-expense tour charter concept was not known in air transportation when the 1962 amendment was adopted.

That "charter" as used in air transportation did not include all-expense tours was explicitly confirmed to Congress by managers of the bill in both Houses before it was enacted. As Senator Scott said, the Senate bill with its definition of charter, which the conferees rejected, proposed to "modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour'." And as the Chairman of the House Committee, Congressman Harris, explained, "in air transportation, charter . . . does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter."

The 1962 amendment excludes the Supplementals from all individually ticketed services except under special temporary circumstances not applicable here and thus precludes inclusive tours which involve such services. Throughout the industry, in the Board's regulations and in the Congressional hearings, both before and during consideration of the 1962 amendment, a definite and clear distinction was drawn between "charter" and "individually ticketed" service. That Congress clearly did not intend that the Supplementals should be authorized to engage in any individually ticketed services pursuant to certificates issued under Section 401(d)(3) of the Act is apparent from an examination of the amendment as a whole. The House bill, which became the law, expressly permitted individual ticketing in only two very limited exceptions, a temporary two-year phasing out period and a special operating au-

thorization for a maximum period of 90 days where there is a temporary inability of scheduled carriers to meet the requirements for service. It is plain that no other individual ticketing was contemplated, as stated in the Conference Report. Since the inclusive tours here involve individually ticketed service they cannot be charters.

Since "charter" does not include all-expense tours—and so obviously not the even less restrictive inclusive tours—the Board is without power to authorize the Supplementals to operate them.

Besides, the Board and the Supplementals recognize that the Supplementals themselves cannot sell inclusive tours. For the Board to authorize them to do this through the medium of travel agents (or "tour operators") is a subterfuge. It is just the kind of charter "device" the Board had warned Congress against and which the Congressional managers of the legislation had assured their fellow Congressmen would be eliminated by the legislation. To permit the Supplementals to sell inclusive tours only if they do so through travel agents is an entirely meaningless condition —by this device the Supplementals are in fact being authorized to operate inclusive tours.

If there could be any doubt what Congress meant when it used the term "charter", it would be dispelled by the legislative history. The final Senate bill would have expressly authorized the Supplementals to operate individually ticketed services, including group all-expense tours. But the Senate bill was rejected by the Conference Committee and the House bill was adopted. On the question of individually ticketed service and all-expense tours, the Senate receded. The Conference Committee Report said that the Conference bill adopted the provisions of the House bill

prohibiting individually ticketed services on a permanent basis.

The adoption of the House bill and the rejection of the Senate bill should by itself be more than sufficient to establish Congressional intent. But the managers of the bill in both Houses left no room for speculation. Senator Cotton referred to the action of the conferees in "eliminating the all-expense tour provision and thus refusing to confer this power on the Board." Senators Scott and Thurmond also expressly stated that the Senate had receded on this point. So did Chairman Harris and Representatives Williams and Collier. All were members of the subcommittees concerned with the legislation; all were members of the Conference Committee; all were managers of the bill. Not a single member of either House expressed any contrary position or disagreement.

The legislative policy decision made by Congress to prohibit inclusive tours cannot be overridden by regulations adopted by the Board. These regulations, in fact, disclose the extent to which the inclusive tours authorized duplicate rather than supplement the individually ticketed services of respondents.

Cases under the Motor Carrier Act relied upon by the Board arise under a different statutory scheme, do not establish the meaning of "charter trips in air transportation" and do not support the Board's position.

While one of the purposes of the 1962 amendment was to aid the economic well-being of the Supplementals this does not override the equally important and specific purpose that Supplementals should be prohibited from operating as "charters" individually ticketed all-expense tours.

II.

The Board amended certificates earlier granted to two Supplementals without holding a hearing, as demanded by respondents here. In so doing, the Board contravened the requirements of the Act and due process. Its action was also in diametric opposition to the decision of this Court in *Delta Airlines, Inc.* v. *Civil Aeronautics Board*, 367 U.S. 136 (1961).

When the Board originally granted the certificates in question, it refused to grant inclusive tour authority to these carriers. In reaching its conclusion to reverse this earlier decision and amend the certificates to include inclusive tour authority, the Board relied on the record on the basis of which it had reached its earlier decision not to grant inclusive tour authority and on officially noticed "Form 41 reports and other data." In granting new certificates to other Supplementals which included inclusive tour authority, the Board similarly relied on such officially noticed data. The Board did not specify the particular data of which it was taking official notice and did not give respondents the opportunity to rebut the implications which the Board drew from this data. This was in violation of the Act, the Board's regulations, the Administrative Procedure Act and the decisions of this Court.

III.

The fact that the President approved the orders set aside below does not bar judicial review of either a question of statutory power or a question of procedural due process, the only issues involved here. *Chicago & Southern Air Lines, Inc.* v. *Waterman S.S. Corp.*, 333 U.S. 103, cited in this connection, involved only a question of substantial

evidence. That case is, therefore, inapposite. The lower Federal courts have indeed refused to extend *Waterman* to a question of statutory power and both the Department of Justice and the Board have concurred with that construction. Questions of procedural due process involve not only questions of statutory power but constitutional questions, as well, and so should be similarly reviewable.

The Act itself does not bar judicial review of an order involving United States air carriers' foreign operations. The President's approval of the Board's action here arises solely from a statute and as such is subject to judicial review.

ARGUMENT

I.

The Board's orders granting inclusive tour authority to Supplementals involving solicitation and individual ticketing of the general public were correctly set aside as violating the Federal Aviation Act.

In setting aside the Board's orders to the extent they granted inclusive tour authority to the Supplementals, the Court of Appeals noted its agreement with the District of Columbia Court's understanding of the basic purpose of the 1962 amendment. As it said (380 F. 2d at 779 (1135a)):

> "In deciding whether grant of inclusive tour authority violates the limitations of the statute it must be remembered 'that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually

ticketed travel.' American Airlines v. Civil Aeronautics Board, *supra*, 348 F. 2d at 354. See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1967)."

The Court declared the orders invalid because (*ibid.*):

"To permit the selling of individual tickets to the general public in direct competition with the regularly scheduled airlines, regardless of whether such selling is done through the medium of a travel agent who has first 'chartered' the plane, does violate basic policies of the Act."

The Court thus focused on the essential vice of the authority granted—a vice from which petitioners seek to divert attention by arguing, in effect, that Congress could not have meant what it said about its purpose and intent when it considered and adopted the 1962 amendment.

But nothing advanced by petitioners is sufficient to overcome these facts: (1) the statute on its face makes no provision for "inclusive tour authority"; (2) the meaning of "charter" as used in air transportation does not include inclusive tours; (3) the distinction between "charter trips" and "individually ticketed services" in the statute demonstrates that "charter trips" do not include inclusive tours; and (4) the legislative history manifests an explicit Congressional intent "to forbid the Board to authorize inclusive tours" (380 F. 2d at 781 (1140a)).

A. *The 1962 Amendment Does Not Authorize the Grant of Inclusive Tour Authority to Supplementals.*

1. The statute itself does not authorize the grant of individually ticketed, inclusive tour authority.

(a) *The 1962 Amendment Does Not Even Refer to Inclusive Tours.*

The 1962 amendment does not authorize the Supplementals to operate inclusive tours. Neither "inclusive tours" nor "all-expense-paid tours" are even referred to in the 1962 amendment. The reference to "all-expense-paid tours" that had at one time appeared in the Senate bill was intentionally omitted from the final bill. Since inclusive tours are not mentioned they cannot be authorized by the Board unless they are included in the 1962 amendment by implication.

(b) *"Charter trips in air transportation" Do Not Include Inclusive Tours.*

The 1962 amendment authorizes the Board to issue certificates for "supplemental air transportation". Supplemental air transportation is defined as "charter trips in air transportation * * * to supplement the scheduled service authorized by certificates" issued to airlines such as respondents. Under the terms of the statute, therefore, the Board has no authority to authorize the Supplementals to engage in anything other than "charter trips in air transportation."

There is no definition of "charter trips" in the 1962 amendment. Hence the meaning of "charter trips in air transportation" can only be derived from the established meaning of "charter" in air transportation at the time the 1962 amendment was adopted. There is no question what that meaning was. As the Chairman of the House Com-

mittee, which formulated the version of the 1962 amendment that became law, stated (*supra*, p. 25):

> "The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter."

"Charter" did not include inclusive tours since they were not even known in air transportation at the time of the 1962 amendment. As ASTA has frankly conceded (ASTA Br., p. 9):

> "• • • The inclusive tour charter concept, whereby a tour operator sells tours utilizing the charter for the to-and-from transportation element of the tour, was not then known in the air travel industry in this country"

The Board's charter regulations in effect at the time of the 1962 amendment and for years prior thereto contained provisions prohibiting travel agents from soliciting members of the general public for the Supplementals under the guise of "charter" operations. It was in order to prevent solicitation of the general public in the guise of selling a charter that the Board developed its "affinity" rules holding in effect that there was a charter if the participants have an association separate and apart from the transportation concerned, *e.g.*, if they are members of the same club, since then they are not members of the general public.[48]

---

[48] Part 208 of the Board's regulations, even now applicable to the sales of air transportation by Supplementals themselves (437a),

The Board's regulations recognize that "charter" as used in air transportation does not permit a "charter" of aircraft to a person whose business is the formation of groups. They have consistently prohibited this practice. Obviously, were such a practice permitted, the integrity of the charter concept would collapse simply through the interposition of an intermediary.[44]

In Congressional hearings leading up to the 1962 amendment, Board Chairman Boyd had advised that the authority to be given the Supplementals under the Board's bill "would be subject to the conditions established by the Board providing for the homogeneity of the charter group", *i.e.*, the Board's affinity rules.[45]

The principal witness for the Supplementals in the Congressional hearings and one of their attorneys in this case, Clayton L. Burwell, stated that all-expense tours were not charters in air transportation. Asked by Senator Monroney whether the all-expense tour authority he was requesting would be on a charter basis, he replied (*supra*, p. 17):

---

specifically prohibits a "solicitation of the general public"; defines that phrase as a solicitation going beyond the "bona fide members of an organization (and their immediate families)"; and defines the last quoted phrase as "members of a charter organization who have not joined the organization merely to participate in the charter as the result of solicitation directed to the general public" (446a-447a; see also 193a). The effect of this prohibition has been completely undercut by the regulations adopted in the orders set aside below.

[44] This practice, which is specifically prohibited in Part 208 of the Board's Regulations (448a), would be encouraged by the regulations adopted in the orders set aside.

[45] S. Hearings, p. 26, *supra*, p. 15.

> "Mr. Burwell: I don't think it is technically—well, it is not a charter basis under the present Board rules. Under the definition that we would like to get it would be."

This fact was specifically confirmed by managers of the bill in both Houses. According to Senator Scott (*supra*, p. 31):

> "The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' . . ."

In a similar vein Chairman Harris advised the House (*supra*, p. 36):

> "'The Senate proposed to change the well established meaning of 'charter.' The House objected to changing it . . ."

Other Congressmen made similar statements, *supra*, pp. 27, 31, 32, 35.

The Senate Report also recognized including an "all-expense paid tour" would change the meaning of charter as it was used in the air transportation industry.[46] Part of the Senate Report not quoted by the Board says (see S. Rep., p. 13):

> "A charter, by common law and general practice in the transportation industry, means essentially the lease of the entire vehicle, in this case the aircraft, for a period

---

[46] The Board would have the Court ignore this distinction altogether (see C. A. B. Br., pp. 7, 18) and therefore suggests that the definition of charter was not really necessary, except insofar as it was designed to prevent individual ticketing "under the guise of charter" (see C. A. B. Br., pp. 14-15, 19).

of time or for a particular trip. Because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter, particularly in international air transportation, the committee has incorporated the common law definition of charter in the statutory definitions contained in the Federal Aviation Act."

As ASTA says (ASTA Br., p. 21):

> "... the Senate Committee was aware that it would have to define charters legislatively in order to validate ITCs [inclusive tours]."

(c) *The Distinction Between "Charters" and "Individually Ticketed Services" in the 1962 Amendment Demonstrates that "Charters" Do Not Include Inclusive Tours.*

That "charter trips in air transportation" in the 1962 amendment does not include inclusive tours, which, as here, involve individually ticketed service, is also clearly shown by the distinction consistently drawn between charters in air transportation and individually ticketed services. That distinction is recognized by petitioners. For example, ASTA points out (ASTA Br., p. 4):

> "Scheduled carriers are authorized to carry passengers on an individually ticketed or charter basis. Supplemental carriers may carry passengers only on a charter basis."

This distinction also appears throughout the hearings leading up to the 1962 amendment and in its legislative history.[47]

---

[47] See *supra*, pp. 8-11, 13-14, 22-24, 29-30. The only exception is the statement in the Senate Committee Report that if a travel

Witnesses and Congressmen repeatedly referred to "charters" on the one hand and "individually ticketed service" on the other.[48]

The 1962 amendment, itself, viewed as a whole makes clear that "charter trips" as used therein could not include the individually ticketed inclusive tour service here involved. The amendment specifically authorized individually ticketed services by Supplementals during a 2-year phase-out period "to permit an orderly transition to an all-charter operation". It also permits the Board to issue special operating authorizations to Supplementals to engage in general air transportation but only when there is a temporary inability of other carriers to meet the requirements for service.[49] This special operating authorization would be valid for not more than 30 days and could be extended for not more than an additional 60 days. These were the only individual ticketing authorizations permitted the Supplementals. The extremely limited power given the Board to authorize indi-

---

agent "charters" an aircraft for an all-expense-paid tour and offers to individual members of the public "the right to participate as a member of a group" this is a very different sort of service from individually ticketed transportation. This statement, as did the Senate bill itself, required participation as a member of a "group", a concept not involved in inclusive tours. What is more significant, however, is that this statement is directly contrary to all other statements on the subject made in connection with consideration and passage of the 1962 amendment and is contrary to the distinction made between charters and individually ticketed services in the First Print of the Senate bill. There is, of course, no question that the Senate Committee wanted the Supplementals to be permitted to operate inclusive tours as charters. The fact is, however, that the Senate bill and the Senate position were rejected by the Conference Committee and in the legislation as finally enacted.

[48] See statements, *supra*, pp. 15-18 and 24-26, 28, 30-32, 34-37.

[49] These two provisions of the 1962 Amendments are omitted from the Board's Appendix of the "relevant provisions" of the statute involved.

vidually ticketed services plainly confirms that no other individually ticketed services were to be authorized under the guise of "charter".

It is clear that "charters" did not include individually ticketed services. An operation must be either one or the other. Since inclusive tours of the type here authorized[50] involve solicitation and individual ticketing of members of the general public, they are not charter operations as that term was understood in air transportation at the time the 1962 amendment was adopted.

2. The legislative history of the 1962 Amendment confirms that individually ticketed, inclusive tour authority is not authorized.

The history of the various bills resulting in the 1962 amendment, the Committee reports and all statements made by managers of the bill in both Houses confirm the intent of Congress to prohibit the Board from authorizing Supplementals to operate inclusive tours whose patronage, as here, is derived from soliciting and individually ticketing members of the general public.

The final Senate bill would have expressly authorized the Board to permit the Supplementals to operate, in addition to charters, (1) certain individually ticketed services and (2) group all-expense-paid tours. The bill would have done the latter by adding to the definition of "charter" a provision that charter included "transportation services offered by an air carrier to individual members of the gen-

---

[50] Not involved here are all-expense tours provided in proper charters, such as those charters operated by both the Supplementals and respondents for business and social organizations. Respondents have never questioned the validity of charters for tours that do not involve solicitation and individual ticketing of the general public.

eral public * * * as a member of a group on an all-expense-paid tour".

But the Senate bill was not adopted. The Conference Committee rejected it and recommended the House bill, which contained no such definition of "charter" and would not have permitted the Supplementals to operate any permanent individually ticketed services. On the question of individually ticketed service and all-expense tours, the Senate "receded", as was made clear in the Conference Committee report, and in statements by managers of the bill in both Houses.[51]

The Conference Committee adopted the provisions of the House bill on all matters here relevant, omitting both the Senate Committee's definition of charter and the authority in the Senate bill for the issuance of certificates for other than charter transportation. The Conference Committee Report states that the Conference bill "adopts the provisions of the House amendment with respect to the prohibition of individually ticketed and waybilled services on a permanent basis." It also states that after the 2-year period during which individually ticketed services could be continued "supplemental air transportation would be limited to all-charter operations, except for limited individually ticketed service which may be authorized by the Board on a temporary basis."

The Conference Committee Report thus also distinguishes between charter operations and individually ticketed services. And it confirms that individually ticketed services are prohibited under the Conference bill.

The statements made not by one but by six managers of the bill, statements made both in the House and in the

[51] See *supra*, pp. 29-32, 35-37.

Senate, expressly and unequivocally confirm what is clearly implicit in the 1962 amendment itself, its legislative development and the Committee reports. The six managers of the bill who spoke on this subject stated expressly that the Board was not given the power to authorize the Supplementals to engage in all-expense tours (and *a fortiori*, not inclusive tours). Senator Cotton referred to the action of the conferees in "eliminating the all-expense tour provision and thus refusing to confer this power on the Board." Senators Scott and Thurmond also expressly stated that the Senate had receded on this point. So did Chairman Harris and Representatives Williams and Collier.[52]

Petitioners, recognizing that statements by the managers of the bill in both Houses unequivocally support respondents' position,[53] urge the Court in effect to ignore these statements.[54] They argue that these statements must be disregarded since they (1) contradict the Committee Reports (ASTA Br., pp. 24, 25; Supp. Br., p. 32); (2) are by opponents of the bill (Supp. Br., p. 32); (3) represent the views of only six members (ASTA Br., p. 23); (4) are simply "planted" statements entitled to no weight whatever (Supp. Br., pp. 33, 49); and (5) arise in an area where there are strong conflicting economic interests (Supp. Br., p. 47).

---

[52] See *supra*, pp. 25, 31-32, 35-36, for their statements on this point.

[53] See, *e.g.*, ASTA's assertion that the "floor speeches . . . were *intended* to have that effect", *i.e.*, to "establish a statutory guideline which prevents the Board from defining charter so as to include I.T.C. [inclusive tour charters]" (ASTA Br., p. 20).

[54] The Board and the Supplementals recognize that statements by those in charge of a bill cannot be entirely ignored, but contend they cannot be given the same weight as Committee Reports (C. A. B. Br., p. 21; Supp. Br., p. 49). They then give no weight whatever to the statements by the bill managers.

(1) It is perfectly clear that the statements of the managers of the bill do not contradict the Committee Reports and the statute, since the Committee Reports and the statute do not support petitioners' position here, as we have shown (pp. 13-14, 21-24, 26, 29-30).

(2) The debates quoted here, *supra*, pp. 24-37, and relied upon by the court below constitute all of the statements made by *managers*[55] of the bill regarding all-expense tour charters. The Congressmen making them were not casual debaters; nor were they "opponents" of the bill; they were *principals* in the entire legislative process. As indicated, in Appendix A to this brief, Mr. Oren Harris was the *Chairman* of the House Committee on Interstate and Foreign Commerce. Mr. John Bell Williams was the *Chairman* of the Subcommittee on Transportation and Aeronautics. It was he who *presided* at the House hearings at which appeared representatives of petitioners and respondents. Mr. Collier was also a member of that Subcommittee. Senators Scott, Thurmond and Cotton were all members of the Subcommittee on Aviation of the Senate Committee on Commerce before which the Senate hearings were held, and in which all three Senators particularly participated. All six of these Congressmen were also members of the Conference Committee.

(3) The fact that only six of the 17 members of the Conference Committee spoke on the subject of all-expense tours does not make this a minority view. Surely, if

---

[55] The Supplementals scorn the respondents' and the court's use of the word "managers" (Supp. Br., p. 51), but that is precisely what these Congressmen were deemed to be by the Congress at the time the 1962 Amendment was enacted (see 108 Cong. Rec. 12318, June 29, 1962).

others disagreed, they could and would have so stated. There was certainly no need for every member of the Committee to state again what had just been said by others.

(4) There is, of course, not one scrap of evidence to indicate that the floor statements were "planted". Chairman Harris, for one, expressly stated that he prepared his own statement (108 Cong. Rec. 12322, June 29, 1962 [231b]). We do not believe even petitioners are suggesting that the statements did not really represent the views of the Congressmen making them.

(5) That there may be economic conflict is irrelevant. This Court has often relied on Congressional debate in cases involving great economic conflict. In *United States* v. *Third National Bank of Nashville* (Slip Op. No. 86, October Term 1967), 36 U. S. L. Week 4178, 4182 (March 4, 1968), a bank merger case arising under Section 7 of the Clayton Act, this Court looked not only to "the language of the Act but . . . the statements of those who supported it while the Act was under consideration."

Statements by members of Congress were also considered by this Court in *Case Swane Co.* v. *Sunkist Growers, Inc.* (Slip Op. No. 66, Oct. Term, 1967), 36 U. S. L. Week 4071 (December 18, 1967); *The Colony, Inc.* v. *Commissioner of Internal Revenue,* 357 U. S. 28 (1958); *First National Bank* v. *Walker Bank & Trust Co.,* 385 U. S. 252 (1966); *Brown Shoe Co.* v. *United States,* 370 U. S. 294, 312-323 (1962); *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* v. *National Labor Relations Board,* 365 U. S. 667 (1961); *National Labor Relations Board* v. *Insurance Agents International Union,* 361 U. S. 477 (1960); *Mitchell*

v. *Kentucky Finance Co.*, 359 U. S. 290 (1959); *Mastro Plastics Corp.* v. *National Labor Relations Board*, 350 U. S. 270 (1955).[56]

Petitioners, seeking to avoid the effect of the unequivocal statements by the sponsors of the 1962 amendment, attempt to make much of the definition of "charter service" in the Senate bill which included an "all-expense-paid tour" and the statement in the Senate Committee report that this would "conform to the traditional concept of charter" (C. A., B. Br., pp. 13, 18; Supp. Br., pp. 12, 44). In the first place, in the first print of the Senate bill all-expense tours were not included in the definition of charter and were clearly excluded by the prohibition against sales to

[56] The cases cited by petitioners in support of their proposition that "casual and scattered remarks emanating from one side or the other in the course of debate on a statute representing legislative compromise and accommodation between strong economic forces in vigorous conflict" (Supp. Br., p. 47) are of no aid to them here. Indeed, *National Labor Relations Board* v. *Allis Chalmers Mfg. Co.*, 388 U. S. 175 (1967), and *National Woodwork Manufacturers Association* v. *National Labor Relations Board*, 386 U. S. 612 (1967), made extensive use of Congressional debate (388 U. S. 185-192, 386 U. S. 633 n. 21). In *National Labor Relations Board* v. *Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U. S. 58 (1964), this Court recognized that it should look to the "sponsors . . . when the meaning of the statutory words is in doubt" (377 U. S. 66), and cited *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U. S. 384 (1951), where the author of the majority opinion, Mr. Justice Douglas, resorted to floor debates to determine legislative intent, stating that courts may look to "what the sponsors wrote and said" (341 U. S. 395; see also 341 U. S. 394). And in *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110 (1942), this Court did look to statements "on the floor of the Senate and the House" (315 U. S. 125). In *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443 (1921), this Court did not look only to Committee Reports, but also "explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in course of passage" (254 U. S. 475). *Hardin* v. *Kentucky Utilities Co.*, 390 U. S. 1 (1968), is a different case entirely. There this Court rejected the interpretation espoused by persons who had sought a more restrictive wording in the statute and who had lost.

individual members of the general public. So at that time they were not considered charters for the purposes of the Federal Aviation Act even by the Senate Committee.

Secondly, while an exception was written into later drafts of the Senate bill, authorizing the Board to permit[57] the Supplementals to offer transportation to "members of a group on an all-expense-paid tour", the Senate bill was not adopted; the Senate receded on the definition of charter service and specifically on the inclusion of all-expense tours. Thirdly, the traditional concept of charter to which the Senate report referred could have reference only to the concept used in surface transportation. Even the petitioners concede that the concept of all-expense tour charters did not exist in air transportation at this time (*supra*, p. 9). Moreover, the Senate was told by the managers of the bill that the Senate bill proposed to modify, whereas the Conference bill which was adopted would confirm, "the established law as to a charter in air transportation," (*supra*, p. 31).

---

[57] The report of the Senate Committee makes it clear that contrary to petitioners' flat assertions (*e.g.*, C. A. B. Br., pp. 7, 19; ASTA Br., pp. 11, 18, 21), the Senate bill would not have *required* the Board to authorize each or any Supplemental to operate all-expense tours (S. Rep. p. 13 [119b]):

> "Because the committee is convinced that individual certificates as a supplemental air carrier must be tailored to the public need and to the capability and interests of the particular carrier, *the bill does not require the Board to grant every supplemental carrier any particular charter authority.* The Board is specifically authorized to designate the geographical area or areas within or between which charter service may be rendered. *The charter authority of one carrier may be quite different from that provided to another. . . .*" (Emphasis supplied.)

The Board's sweeping grant of blanket inclusive tour authority in the certificates involved in the present orders simply highlights the Board's disregard of another limitation that the Senate wished to impose.

Finally, inclusive tours, of the type here involved, do not conform to the traditional concept of charter in surface transportation. As we point out below (*infra*, pp. 68-71), these inclusive tours are not comparable to the type of all-expense tours authorized as charters under the Motor Carrier Act.

3. The use of travel agents does not transform inclusive tours into charters.

The Board and the Supplementals concede that the Supplementals themselves cannot sell inclusive tours (Order No. 23350, 345a-346a). The direct sale of inclusive tours would clearly not constitute "charter trips in air transportation" which the Board could authorize them to operate. The interposition of a travel agent as a middleman does not change the substance of the operation in any way. Under the Supplementals' existing inclusive tour authority members of the general public are being solicited and individually ticketed by the Supplementals, often directly, as shown in Appendices C and D.

One of the principal abuses the Board had to cope with in the earlier days of operations by "non-scheduled" or "irregular" carriers was the attempted use by these carriers of various devices, including sales through agents, to circumvent the law and the Board's regulations (see *supra*, p. 8). Because of this past experience the Board had adopted regulations preventing travel agents from soliciting the general public and the Chairman of the Board warned the Senate Committee against authorizing charters that would "put travel agents in the business of soliciting groups at the expense of the regular route operators" (see *supra*, p. 16). In addition, Congress was told by managers of the 1962 amendment that an air transportation charter

"does not include solicitation of the general public, or any device where individually ticketed services could be offered or performed under guise of charter" and was warned to make sure that charters are "not employed as a subterfuge to perform individually ticketed services" (*supra,* p. 25).

To permit the Board to authorize Supplementals to operate inclusive tours through travel agents would be to permit them to do indirectly and through a subterfuge what they clearly could not do directly. It is just the kind of charter "device" that Congress was warned against and that Congress was assured by managers of the bill would not be permitted by the 1962 amendment. Most of the all-expense tours sold to individual members of the general public on the scheduled services of respondents are sold through travel agents (see ASTA Br., p. 3). If the Supplementals could sell inclusive tours directly they would also use the services of travel agents. Consequently, it is meaningless for the petitioners to argue, as they apparently do here, that while the Board cannot authorize the Supplementals to sell inclusive tours without the services of travel agents, they can do so if the services of the travel agents are used.

In spite of the use of the charter "device" the inclusive tour authority authorized by the Board is individually ticketed service and not "charter trips in air transportation" and is therefore invalid under the 1962 amendment.[58]

---

[58] Utterly devoid of merit is the Supplementals' contention that the decision of the court below will "have an adverse effect on the balance of payments problem", since foreign Supplementals will be permitted to carry inclusive tours while domestic Supplementals will not (Supp. Br., pp. 33, 53-54). The Board has the authority under section 402 of the Act to modify the certificates of the foreign carriers so as to prevent the kind of imbalance the Supplementals fear. This is pointed up by a very recent order of the Board in

B. *The Board Cannot by Regulation Override the Limitations Intended by Congress.*

Having lost the battle in Congress, the Supplementals and now the Board have sought to bring about inclusive tour authority by administrative fiat. But since Congress did not give the Board power to authorize inclusive tours, the Board does not have such power even if, as petitioners allege, its regulations would effectively control the abuses that Congress feared might arise by the exercise of such power.[59] This Court has often recognized that the motive of Congress "so long as Congress acts in pursuance of its constitutional power" is irrelevant. *Barenblatt* v. *United States,* 360 U.S. 109, 132 (1959).

Petitioners nonetheless insist that the Board, by regulation, has corrected the abuses about which Congress was concerned when it withheld from the Board power to authorize inclusive tours and so has "justified" its assumption of power to grant inclusive tour authority. But to hold thus would be to permit the Board to expand the scope of its statutory power, which it clearly cannot do. To justify the *existence* of power by reliance upon regula-

---

which it directed a foreign air carrier to show cause why an "imbalance between that carrier and a United States carrier should not be redressed by modifying the certificate of the foreign carrier" (Order No. E-25823 (October 11, 1967)). Indeed, just the other day, the Board recognized this right in granting inclusive tour authority to a foreign carrier. In *Lloyd International Airways Ltd.,* Order No. E-26616 (April 5, 1968), the Board stated (pp. 3-4):

> ". . . if the Board's position as to its authority with regard to the American carriers is not upheld, there will be ample opportunity thereafter to consider whether revision of Lloyd's permit is required."

[59] Indeed, the regulations adopted simply demonstrate that the inclusive tours authorized permit the Supplementals to duplicate the individually ticketed services offered by respondents (*supra,* pp. 37-41).

tions adopted to control the *exercise* of that power, such as the Board suggests here (C. A. B., Br. p. 27), would mean that power would exist or not depending on the particular regulations adopted by the Board, an altogether untenable suggestion.

Of course, Congress had the power to prohibit inclusive tours on the basis of abuses that it thought might occur. And the Board cannot limit that power by finding such abuses would not in fact occur. See *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158 (1964).

Respondents do not question that the "construction put on a statute by an agency charged with administering it is entitled to deference by the courts" *Volkswagenwerk* v. *Federal Maritime Commission* (Slip Op. No. 69, October Term 1967), 36 U.S.L. Week 4197 (March 6, 1968). However, as this Court pointed out in *Volkswagenwerk* (Slip Op., p. 10):

> "the courts are the final authorities on issues of statutory construction." [60]

The question of inclusive tour authority is a major policy decision which the Board may not assume to make (H. Rep., p. 22 [66b]).[61] This Court, in exercising its right to review

---

[60] See also *Stark* v. *Wickard*, 321 U.S. 288 (1944); *National Labor Relations Board* v. *Brown*, 380 U.S. 278-291 (1965); *American Shipbuilding Co.* v. *National Labor Relations Board*, 380 U.S. 300, 318 (1965).

[61] The cases cited by the Board in support of the proposition that the meaning given a statutory term by the agency charged with its enforcement will be respected by the courts (C.A.B. Br., p. 23), and the cases cited by the Supplementals for a similar proposition (Supp. Br., p. 35 *et seq.*) are of no aid to them here.

For instance, the Board's quotation from *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1 (1968), shows that this Court there recognized that a determination which "lacks reasonable support in rela-

statutory construction, has repeatedly stated that where Congress has expressed a limitation, it is not for an administrative agency to rewrite the law. Thus, this Court, in determining that the Federal Trade Commission had acted beyond its power, in *Federal Trade Commission* v. *Raladam Co.*, 283 U.S. 643 (1931), pointed out (283 U.S. at 649):

> "Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable, they must be conferred by Congress. They cannot be merely assumed by administrative officers. . . ."[62]

If the time has come for reevaluation of the basic scope of the Supplementals' authority, as petitioners seem to contend (C. A. B. Br., p. 27; Supp. Br., p. 42), Congress and not the Board must reevaluate. This precise problem came up in *National Labor Relations Board* v. *Insurance*

---

tion to the statutory purposes" will be set aside. In *National Labor Relations Board* v. *Coca Cola Bottling Co.*, 350 U.S. 264 (1956), the Court found that the Board's determination was "a reasonable, if indeed not a compelling, construction of the statute" (350 U.S. 269)—not the situation here. In *Gray* v. *Powell*, 314 U.S. 402, 411-413 (1941), a question of fact finding was involved. In *Udall* v. *Tallman*, 380 U.S. 1 (1965), there was "no statutory limitation involved" (380 U.S. at 17); an executive order was involved. The Secretary's interpretation of the order had been in effect for fourteen years before the final decision of the Secretary from which appeal was taken, and many persons had relied thereon throughout this period. On this basis, the Court concluded that if the Secretary's interpretation was "not unreasonable," it should be sustained. *Securities and Exchange Commission* v. *New England Electric System*, Slip Op. No. 305 (October Term, 1967), 36 U.S.L. Week 4190 (March 5, 1968), did not involve a question of statutory interpretation (see Slip Op. page 3).

[62] See also *Federal Communications Commission* v. *American Broadcasting Co.*, 347 U.S. 284 (1954); *Social Security Board* v. *Nierotko*, 327 U.S. 358, 369 (1946); *Burfenning* v. *Chicago, St. Paul, Minneapolis & Omaha RR Co.*, 163 U.S. 321 (1896).

Agents International Union, 361 U.S. 477 (1960), which involved construction of section 8(b)(3) of the National Labor Relations Act. This Court determined that the Board had exceeded its authority, and that it had moved "into a new area of regulation which Congress had not committed to it" (361 U.S. at 499). It pointed out that a reevaluation "is for Congress. Congress has demonstrated its capacity to adjust the Nation's labor legislation to what, in its legislative judgment, constitutes the statutory pattern appropriate to the developing state of labor relations in the country" (361 U.S. at 500).

This is the rule by which the Board must abide. Any rule by which the Board would be permitted to exceed its grant of power by the adoption of regulations designed to meet difficulties Congress supposed existed would simply transfer the legislative function to an administrative agency.

C. *The Petitioners' Reliance on Motor Carrier Cases Is Misplaced.*

Petitioners rely heavily on precedent under the Motor Carrier Act (49 Stat. 552). That reliance is misplaced for a number of reasons.

1. The Board itself has recognized that "regulatory concepts under the Interstate Commerce Act are not to be imported uncritically into the Aviation Act." Appendix A to Order E-23350 (868a). Indeed, the legislative history makes amply clear that the common law definition of charter is not utilized in air transportation, *supra,* pp. 24, 31-32, 34-36.

2. The 1962 amendment authorizes a separate class of carriers with authority limited to charter operations, the

Supplementals, and provides that carriers holding certificates under other provisions of the Act may not receive certificates as Supplementals (49 U. S. C. §401(d)(3)). In contrast, in enacting the Motor Carrier Act, Congress did not divide common carriers into two classes, one authorized to engage in individually ticketed travel, special service and charter transportation and the other limited to charter transportation. Congress authorized the issuance of certificates of convenience and necessity to common carriers of passengers by motor vehicle to engage in individually ticketed travel over regular routes, "to engage in special or charter operations" or to engage in both. 49 U. S. C. §307(a).[88]

3. Further evidence of the difference in the legislative scheme of the two acts is reflected by their legislative histories. As pointed out in *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689, 696 (D. N. J. 1956), affd. 352 U. S. 1020 (1957), under the Motor Carrier Act there was a complete absence of any legislative history evidencing an intention to prohibit travel agents from operating all-expense tours, whereas this was a matter of specific concern to Congress in the legislative history of the 1962 amendment.

---

[88] In *Fordham Bus Corp.* v. *United States*, 41 F. Supp. 712, 717 (S.D.N.Y. 1941), it is stated that typically a carrier engaging in special operations "advertises a special excursion and solicits individuals to purchase tickets", while in contrast in a charter "the carrier is not the instigator of the trip, but merely negotiates with a group which is already formed." Generally speaking there is no need under the Motor Carrier Act to distinguish between special and charter operations. This was pointed out in *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689, 692 (1956), affirmed 352 U.S. 1020 (1957), where it was stated it was not necessary to discuss the difference between "charter" and "special" in order to decide the case at bar.

4. The Motor Carrier precedents relied on demonstrate that the inclusive tours authorized by the Board here would not constitute a valid charter or special service under that act. In *Greyhound Corp.* v. *Edwards,* 100 M. C. C. 453 (1966), the Interstate Commerce Commission held that one-day tours arranged by a travel agent for shopping or gambling were not bona fide operations because the group lacked any community of interest beyond the desire for transportation to and from a given point.[64] The Commission declared that for a "tour group to have a community of interest the trip or tour arranged by the broker must include participation by the group members in some recognizable, previously arranged and agreed-upon group activity" such as "sightseeing or attendance at a social function, athletic contest, dramatic presentation, cultural event, religious service, or the like" (100 M. C. C. at 464). Similarly, in contrast with the tours authorized by the Board in the present case, the tours approved in the *Tauck Tours* case were guided, all-expense tours on which the group traveled together and shared accommodations and pleasures. *Tauck Tours, Inc.,* 54 M. C. C. 291, 302 (1952), 63 M. C. C. 493 (1955), affd. *sub nom., National Bus Traffic Association* v. *United States,* 143 F. Supp. 689 (D. N. J. 1956), affd. 352 U. S. 1020 (1957).

What is more, in *National Bus Traffic Association* the court stressed the conditions imposed by the Commission upon the applicant broker's use of charters, including one that the contract be between the carrier furnishing the motor transportation and "the group members collectively".

---

[64] The so-called gambling trips held unlawful did not require joint activity unlike the bingo tours which did.

In distinguishing special and charter services it described charter services as follows (143 F. Supp. at 692):

> "Charter service contemplates the transportation of groups, such as lodges, bands, athletic teams, schools, or other travel groups, assembled by someone other than the carrier, who *collectively* contract for the exclusive use of certain equipment for the duration of a particular trip or tour." (Emphasis supplied.)

In the inclusive tours authorized by the Board, the "group" assembled by the travel agent does not "collectively contract" with the Supplemental for the use of the aircraft. Consequently, inclusive tours would not be charters even under the Motor Carrier Act. If they are "special services" the Board has no authority to authorize them. The Federal Aviation Act, as the Motor Carrier Act, does recognize that there are both charters and other "special services" since air carriers, other than Supplementals, are authorized to perform "charter trips or any other special service" without regard to the points named in their certificates (Sec. 401(e)(6)). The 1962 amendment, however, gives the Board power to authorize the Supplementals to engage only in charter operations. The Board cannot authorize them to engage in other special services as the Interstate Commerce Commission can authorize motor carriers.[65]

---

[65] The Supplementals had previously recognized the importance to them of obtaining authority to conduct special services and had attempted to obtain this authority from the Board. Although the Board's Examiners had recommended granting them authority for limited special service flights, the Board refused to grant such authority (*supra*, pp. 10-11).

D. *Economic Advantages to the Supplementals Cannot Justify Disregard of the 1962 Amendment.*

The Board and the Supplementals seem to argue that the power conferred on the Board by the 1962 amendment can be expanded by what they claim to be the overall purpose of the statute—to improve the economic well-being of the Supplementals (C.A.B. Br., p. 6, Supp. Br., p. 31).

Respondents, of course, do not question that one of the purposes of the 1962 amendment, as the court below noted, was "to assure their [the Supplementals'] economic viability" (380 F. 2d at 777 (1132a)). But as both the court below and the District of Columbia Court also recognized, a principal purpose of the 1962 amendment was "to maintain the regulatory scheme of the Federal Aviation Act and the protection of the certificated carriers, such as petitioners [respondents] by eliminating unregulated individually ticketed point-to-point competition from the supplementals" (*ibid.*; 365 F. 2d at 944-945). Nothing in the statute or its legislative history supports an argument that the Board is empowered to do everything that will help the Supplementals economically, even if it runs counter to another purpose of the statute—that Supplementals should not be permitted to operate individually ticketed services but should be confined to charter operations which do not include individually ticketed services under the guise of "inclusive tours".

What the Board and Supplementals are really arguing is that economic advantages that might accrue to the Supplementals, if they were given free rein to solicit and ticket individual members of the general public to use their inclusive tour services, would justify this Court in disregarding the policy decision made by Congress and substitute one made by the Board.

II.

The Board unlawfully deprived respondents of a hearing in the reopened Transatlantic Charter Investigation.

The Board in the *Reopened Transatlantic Charter Investigation* amended the previously approved certificates of two Supplementals, which had become final.[66] The certificates had not permitted these Supplementals to carry inclusive tours. The amendments authorized them to do so. The Board, at the same time, and relying on the order granting such amendments, also issued new certificates in the transatlantic area to other Supplementals permitting them to carry inclusive tours (Order No. E-24242, 1097a-1106a).

These actions were taken without holding a hearing on whether the outstanding certificates should be so amended or the new certificates should include inclusive tour authority, and so were a violation of the Act and the Fifth Amendment. The Board, moreover, reversed its prior decision denying such authority without giving respondents the opportunity to meet unspecified new data relied upon by the Board and still undisclosed in the order set aside (Order No. E-24240, 1060a-1082a).

The Act requires the Board to hold hearings before granting, altering, amending or modifying any certificates (49 U.S.C. § 1371). Title 5 of the United States Code, Section 554, sets forth the requirements for a hearing where,

---

[66] The Board's suggestion that the previously approved certificates had not become final is refuted by its statement on the face of each, "Issuance of this certificate to the holder approved by the President of the United States on February 18, 1964" (783a, 786a).

as here, the matter is "required by statute to be determined on the record after agency hearing" (5 U.S.C. § 554).[67]

A. *The Board Illegally Amended Certificates Without a Hearing.*

The Board, in ignoring the statutory requirements before amending the two Supplemental certificates, said it relied on the hearings held before the certificates were issued, although on the evidence adduced at those hearings it had denied inclusive tour authority.

In *Delta Air Lines, Inc.* v. *Civil Aeronautics,* 367 U.S. 318 (1961), the Board, as here, relied on an earlier record to avoid the hearing requirement. It summarily modified the terms of Delta's certificate without notice and hearing, on a petition for reconsideration filed before the certificate had become effective. The Board thought it could do so because at the time it permitted the certificate to become effective, it had stated that approval did not foreclose "the Board from full and complete consideration of the pending petitions for reconsideration of their merits" (280 F.2d 43, 45, n. 4).

As it does here (C.A.B. Br., p. 34), the Board argued there (367 U.S. at 331):

> "respondent 'in substance' enjoyed the hearing contemplated by § 401 (g) because the matters impelling the Board to change its mind were matters that had been thrashed out during the hearings on the original certificate."

---

[67] Formerly Section 7 of the Administrative Procedure Act.

This Court held this (367 U.S. at 331)

> ". . . assumes a fact that we do not have before us—that a hearing would not have disclosed any further evidence or, perhaps more importantly, any post-certification events weighty enough to alter the Board's thinking."

It pointed out that the language of Section 401(g) of the Act "represents to us an attempt by Congress to give the Board comprehensive instructions to meet all contingencies." (367 U.S. at 323).

The Court concluded that the hearing requirements of the statute had not been met by this procedure. It went even further (367 U.S. at 332).

> "It might be added that some authorities have felt strongly enough about the practical significance of this practice to suggest that their presence may be required by the Fifth Amendment."

As in *Delta*, the Board relied here on proceedings held sometime earlier—four years earlier. The Board contends here it went further than in *Delta* and relied also on post-certification data that justified reversal of its earlier decision that the certificates in question should not authorize inclusive tours. But respondents here were given no opportunity to meet that new data and did not even know about it until the Board's opinion disclosed its action without specifying "the other data" which changed the Board's mind. As will be shown *infra* (pp. 77-79), this only aggravates the error.

B. *The Board Did Not Meet the Hearing Requirements of the Act Before Granting Inclusive Tour Authority in New Certificates.*

The Board included in the newly granted certificates of the Supplementals authorized to engage in transatlantic operations[68] the right to carry inclusive tours without any hearing on that issue. It simply relied on its order amending the certificates of two Supplementals discussed above.

That order, in turn, was said to be based on hearings held before the alleged change in conditions upon which the Board based its reversal, and on officially noticed data. Those earlier hearings, on the basis of which inclusive tour authority had been denied,[69] cannot constitute a hearing according with the requirements of the Act. *Delta, supra,* makes clear that a hearing must be adequate. So does *Trans World Airlines, Inc.* v. *Civil Aeronautics Board,* 339 F.2d 56 (2 Cir. 1964), cert. den., *Hughes Tool Co.* v. *Trans World Airlines, Inc.,* 382 U.S. 842 (1965), in which the Court of Appeals held that the "investigation and findings [of the Board] preceding its previous orders" were no substitutes for the hearing required and remanded the matter to the Board for a further hearing. And in *Morgan* v. *United States,* 304 U.S. 1, 18-19, 20 (1938), this Court recognized:

> "The right to a hearing embraces not only the right to present evidence but also reasonable opportunity to know the claims of the opposing party and to meet them."

---

[68] American Flyers Airline Corp., Overseas National Airways, Inc., Trans International Airlines, Inc., World Airways, Inc.

[69] In those original proceedings, two of the Supplementals who were granted certificates in the *Reopened Transatlantic Charter Investigation,* Trans International Airlines, Inc. and American Flyers Airline Corp., were not even applicants.

The requirement for an adequate hearing is clearly not met where the Board relies on a hearing held years earlier, particularly when the Board bases its decision on a subsequent change in circumstances to reverse its contrary decision resulting from the earlier hearing.

C. *The Board Was Required to Give Petitioners the Opportunity to Meet New Data the Board Relied On.*

The Board also sought to support the orders reversing its earlier decision on the basis of "official notice" of unspecified "Form 41 reports and other data".

"Official notice" is no substitute for the hearing required by the Act. As pointed out long ago by this Court in *United States* v. *Abilene & Southern Railway Co.*, 265 U.S. 274, 289 (1924), regulations authorizing an administrative agency to take notice of certain documents in its files do not "purport to relieve" the agency from introducing, by specific reference, such parts of the reports as it wishes to treat as evidence. There is very good reason for this requirement, as Justice Brandeis explained on behalf of the unanimous Court (265 U.S. 289):

> "The objection to the use of the data contained in the annual reports is not lack of authenticity or untrustworthiness. It is that the carriers were left without notice of the evidence with which they were, in fact, confronted, as later disclosed by the finding made. The requirement that in an adversary proceeding specific reference is made, is essential to the preservation of the substantial rights of the parties."

See also *Interstate Commerce Commission* v. *Louisville & Nashville RR Co.*, 227 U.S. 88, 93 (1913); *Ohio Bell Tele-*

phone Co. v. *Public Utilities Commission of Ohio,* 301 U.S. 292, 301-302 (1937).

The opportunity to know and to rebut damaging evidence goes to the heart of the controversy and lack of such opportunity vitiates the whole proceeding. See *e.g., DeGraw* v. *Toon,* 151 F.2d 778, 780 (2 Cir. 1945).

The Board's own regulations, indeed, recognize the need to prevent such a violation of the statute and due process (14 CFR § 302.24(m)(3)):

> ". . . where the decision rests on official notice of a material fact or facts, it [the Board] will set forth such items with sufficient particularity to advise interested persons of the matters which have been noticed."

Yet not one of the Board's own requirements was complied with here. The Board simply stated that it relied on "Form 41 reports and other data of which we may take official notice." The Board did not specify the portions of the reports and the other data noticed. This clearly is not sufficient notice, especially where the regulations provide that the Board may take official notice of 42 broad categories of documents, as well as "other matters or documents properly the subject of official notice" (14 CFR § 302.24 (m)(1)). Certainly, "facts conceivably known to the commission but not put in evidence will not support an order," *The Chicago Junction Case,* 264 U.S. 258, 263 (1924).

This Court should not accept the Board's assurance that respondents could have done nothing in a hearing which would have altered the result the Board reached. A court should not be required to try to apprise itself of the nature of off-the-record evidence to determine whether a party

may be able to rebut it by evidence of its own. See *e.g.*, *Deep South Broadcasting Co.* v. *Federal Communications Commission*, 347 F.2d 459, 463 (D.C. Cir. 1965); *W. S. Butterfield Theatres, Inc.* v. *Federal Communications Commission*, 237 F.2d 552, 556 (D.C. Cir. 1956).

What the Board did here is precisely what it did in *Northeast Airlines, Inc.* v. *Civil Aeronautics Board*, 345 F.2d 484 (1 Cir. 1965), cert. den. *sub nom. Eastern Airlines, Inc.* v. *Northeast Airlines, Inc.*, 382 U.S. 845 (1965). In *Northeast* the Board sought to overcome the requirements of a hearing by taking official notice of "reports filed by the carriers since the formal closing of the evidentiary record and other stipulated materials" (345 F.2d at 845). It then "rendered a new and, what it terms 'complete recast' of its decision" (345 F.2d at 485). The Court of Appeals held (345 F.2d at 487):

> "Having opened the door to new data, the Board was obliged to take a full look."

As it had previously observed (345 F.2d at 486):

> "It is to us crystal clear that as soon as it elected to look at such matters it could not pick and choose, at least to the extent of denying an objecting party the rights guaranteed, but by no means created, by section 7(d) to rebut not only those matters it looked to, but also the inferences which were sought to be drawn therefrom. Due process could permit no less."

Respondents urged these requirements before the Board, but the Board refused to afford any hearing. The Board's action is a violation of the Act, Title 5 of the United States Code, and is a denial of due process.

D. *Petitioners' Attempt to Prevent Adjudication of the Board's Failure to Meet Procedural Requirements.*

The Supplementals and the Board contend that the issues raised may not be considered because: (1) there was no prejudice since the Board relied on respondents' own reports (C.A.B. Br. p. 35); (2) the objections were first raised in the court below (Supp. Br. p. 56); (3) no request was made for specification of the additional data relied upon (C.A.B. Br. p. 35); (4) respondents "failed to specify in their briefs below the alleged controversial errors committed by the Board or the contrary evidentiary showing that respondents would have been prepared to make" (C.A.B. Br. p. 35; Supp. Br. p. 56).

1. The Board's present claim that it relied on respondents' own reports is its *post hoc* conclusion as to what was relied upon. The Board's order simply refers to "Form 41 reports and other data of which we may take official notice" (*supra,* p. 7)—no specification is made. Even had the Board relied only on respondents' own reports, petitioners may have been prejudiced by the use of such material without the right to explain it, as this Court has pointed out in the cases cited *supra,* pp. 77-79.

2. Respondents did object to the Board's procedure before the Board, arguing that they were entitled to a new hearing before inclusive tour authority could be approved in the transatlantic area (963a-967a, 968a-975a). This right was sought so that, among other things, respondents could counteract any material of which the Board might take official notice. (See brief to the Board, p. 970a). The Board rejected respondents' request.

3. The Board having rejected this request, any attempt to obtain specification from the Board would merely have further delayed the already protracted proceedings without giving respondents any opportunity to refute the Board's data. Petitioners cannot bar respondents' right under the provisions of section 1006(e) of the Act (49 USC § 1486(e)) because the Board's attention had already been called to its error and the Board nevertheless persisted in the error.

4. Respondents not only spelled out in their brief to the Board the prejudicial errors committed by the Board but also specified the type of information they contended must be considered before inclusive tour authority, if lawful, could be authorized in the transatlantic area (972a-975a). They pointed out that information concerning the following should be obtained: (1) Possible international problems, such as landing rights (972a) and the effect on United States balance of payments (974a); (2) evidence on the question of "how, when and where the travel agent, as the principal who would organize, promote and sell these tours to the public, is to offer and sell this service" (974a); (3) evidence on the "continued reductions in fares on scheduled services, and the adverse effect of that continuing trend (and on the well-being of the scheduled carriers) of the massive diversion threatened by authorizing supplemental air carriers to provide all-expense tours" (966a); and (4) evidence on the high profits and financial condition of the Supplementals (966a). All this was also pointed out in respondents' reply brief in the court below.

III.

The orders challenged are subject to review although approved by the President.

The Supplementals raise as a question "[w]hether under the doctrine of *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, the Board's orders were reviewable only by the President and not by the courts" (Supp. Br. p. 2), although they do not argue this point.

The Board concedes that under constructions of *Waterman* adopted by the lower courts without objection by the Government, the Board's power to enter an order subject to Presidential approval is reviewable by the courts (C.A.B. Br., p. 31, n. 48). The Board, however, distinguishes between judicial review of its power to enter such an order and judicial review of procedural errors in such an order. Nevertheless, it does not argue *Waterman* (*ibid.*, p. 32).

Waterman did not involve a question as to the Board's power or a question as to the adequacy of hearings. The sole issue was the correctness of the Board's findings and the adequacy of the evidence underlying them. The challenge here is not to these matters but to the Board's authority and to the regularity of the proceedings below.

The lower courts have held *Waterman* should not be extended to questions of the Board's authority and in doing so have acted with the approval of the Board and the Department of Justice (cf. C. A. B., Br. p. 31, n. 48). Thus, in *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (D. C. Cir. 1965), the District of Columbia Court acted on the recommendation of the Board

in reaching its conclusion that *Waterman* should not preclude review of the Board's authority.

The Board and the Department of Justice in their joint brief to the Court of Appeals there had stated:

> "The government's position is that review of orders approved by the President may be had on the limited question of whether the President and the Board have exceeded their constitutional and statutory authority. See *Alaska Airlines, Inc.* v. *Pan American World Airways, Inc.*, 116 U.S. App. D.C. 128, 321 F.2d 394 (1963); *British Overseas Airways Corp.* v. *Civil Aeronautics Board*, 113 U.S. App. D.C. 76, 304 F.2d 952 (1962)."

Clearly, the Board and the Department of Justice are correct when they concede that the question of statutory power to authorize inclusive tours is reviewable. They do not explain how they distinguish the statutory power question involved in the inclusive tour issue from that involved in the hearing issue. Not only does the hearing issue involve a statutory question, it involves a constitutional one as well.

While the Supplementals state that there is no occasion now to re-examine the scope of *Waterman*, they characterize the *Waterman* decision as holding that orders involving international operations are not subject to judicial review "essentially because they involve foreign affairs, an area in which the President alone could speak for the Nation", thus implying that *Waterman* would bar any review, even of the question of statutory authority (Supp. Br. p. 55).

Any claim that *Waterman* would bar review here must be based upon some such broad grounds for Congress

clearly has not precluded judicial review.[10] Section 801 of the Act requires Presidential approval of orders involving foreign air transportation, which is involved here. But Section 1006 does not bar judicial review of such orders. Section 1006 is explicit. It provides, in pertinent part:

> "Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review. . . ."

The Supplementals are, of course, "air carriers", not "foreign air carriers", who are not United States citizens.

The difference between Section 801 and Section 1006 is no accident. As originally drafted, H.R. 9738, the bill first introduced into the House on January 3, 1938, would have precluded judicial review of any order involving "foreign air transportation" (see Sections 303(a) and 504). "Foreign air transportation" includes operations by United States airlines to foreign countries. As the bill evolved in committee the provision was changed and by April 6, 1938 judicial review of an order involving foreign air transportation, other than by a foreign air carrier, was not prohibited (Sections 801, 1005). The legislative history of these sections in the Senate was parallel to that in the House.[11]

---

[10] The first question is, of course, whether Congress intended to forbid review, since "judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress." *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 140 (1967); see also *International Association of Machinists, AFL-CIO* v. *Central Airlines, Inc.*, 372 U.S. 682 (1963).

[11] Thus, the original Senate bill introduced on April 14, 1938 would, on its face, have precluded judicial review here (see Sections

The basis, then, if any, for barring judicial review here would have to be found in the Constitution.

The fact that foreign air transportation is involved here does not, *ipso facto*, bar review, especially without regard to the question being reviewed. *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 423, 428, 439, 461-2 (1964); *Baker* v. *Carr*, 369 U.S. 186, 211-212 (1962).

Certainly the concession of the Board and the Department of Justice here that review of the power of the Board is not barred by *Waterman* indicates that foreign policy considerations of a Presidential nature are not here involved.

In any event, the questions of statutory or constitutional construction involved here are questions for the courts to decide. There are no matters requiring exercise of executive discretion or judgment on which the decision of the President on foreign affairs is required.

Where, as here, executive action is founded on an act of Congress, it is the right and duty of this Court to consider whether the executive has acted in accordance with the requirements of that Act. *Cole* v. *Young*, 351 U.S. 536 (1956); *Kent* v. *Dulles*, 357 U.S. 116 (1958). This rule has been followed even though the President and questions involving foreign affairs, national defense or national security are in some way involved in the alleged illegal action. *Zemel* v. *Rusk*, 381 U.S. 1 (1965); *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1962); *Estep* v. *United States*, 327 U.S. 114 (1946).

801, 1006(a)). But the committee print introduced a few days later changed the pattern and provision was made for judicial review of orders involving foreign air transportation except those relating to foreign air carriers (Sections 801, 1005).

Thus the action here allegedly taken on the basis of a statutory grant and in derogation thereof is subject to judicial review.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

EDWARD R. NEAHER
Counsel for Respondents

CARL S. ROWE
GERTRUDE S. ROSENTHAL
CHADBOURNE, PARKE, WHITESIDE & WOLFF
New York, New York
Of Counsel

Dated: April 15, 1968

LIBRARY
SUPREME COURT, U. S.

APPENDICES TO BRIEF FOR RESPONDENTS

Office Supreme Court
FILED
APR 15 1968
JOHN F. DAVIS, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 800, 946, 969

WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., SATURN AIRWAYS, INC., PURDUE AERONAUTICS CORP., CAPITOL INTERNATIONAL AIRWAYS, INC., and CIVIL AERONAUTICS BOARD, and AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,

Petitioners,

—against—

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EDWARD R. NEAHER
25 Broadway
New York, New York 10004
Counsel for Respondents

CARL S. ROWE
GERTRUDE S. ROSENTHAL
CHADBOURNE, PARKE, WHITESIDE & WOLFF
New York, New York
Of Counsel

TABLE OF CONTENTS

	PAGE
APPENDIX A—Committee Members	A-1
APPENDIX B—Inclusive Tours Authorized by the Board	B-1
APPENDIX C—Specimens of Advertising by the Supplementals and Tour Operators	C-1
APPENDIX D—Brochures for Inclusive Tours	D-1

APPENDIX A

Committee Members

House Committee on Interstate and Foreign Commerce[1]

*OREN HARRIS, Chairman

*JOHN BELL WILLIAMS[2]
Peter F. Mack
Kenneth A. Roberts
Morgan M. Moulder
*HARLEY O. STAGGERS
Walter Rogers
SAMUEL N. FRIEDEL
John T. Flynt, Jr.
Torbert H. MacDonald
George M. Rhodes
*JOHN JARMAN
Leo W. O'Brien
John E. Moss
John D. Dingell
Joe M. Kilgore
Paul G. Rogers
Robert W. Hemphill
*Dan Rostenkowski
James C. Healy

JOHN B. BENNETT
*WILLIAM L. SPRINGER
Paul F. Schenck
J. Arthur Younger
*HAROLD R. COLLIER
Milton W. Glenn
SAMUEL L. DEVINE
Ancher Nelson
Hastings Keith
Willard S. Curtin
Abner W. Sibal
Vernon W. Thompson
Peter H. Dominick

[1] Members of the Subcommittee on Transportation and Aeronautics are underlined. Managers of the bill are capitalized. Members who participated in the debates are marked with an asterisk.

[2] Chairman of the Subcommittee on Transportation and Aeronautics.

Appendix A

Senate Committee on Commerce[1]

WARREN G. MAGNUSON, Chairman

John O. Pastore	John Marshall Butler
*A. S. MIKE MONRONEY[2]	*NORRIS COTTON
GEORGE A. SMATHERS	Clifford P. Case
*STROM THURMOND	*THRUSTON B. MORTON
*Frank J. Lausche	*HUGH SCOTT
Ralph Yarborough	Kenneth B. Keating
*CLAIR ENGLE	
E. L. Bartlett	
Vance Hartke	
Gale W. McGee	

[1] Members of the Subcommittee on Aviation are underlined. Managers of the Bill are capitalized. Members who participated in the debates are marked with an asterisk.

[2] Chairman of the Subcommittee on Aviation.

APPENDIX B

Inclusive Tours Authorized by the Board*

Date Adopted	Number of Tours Granted	Orders Approving Tours
July 1, 1966	4	E-23888, as amended by E-24001, E-24038
August 4, 1966	8	E-24041
August 10, 1966	1	E-24062
October 3, 1966	2	E-24255
October 18, 1966	1	E-24302
November 9, 1966	2	E-24386, as amended by E-24513, E-24601
December 2, 1966	49	E-24473
December 7, 1966	9	E-24487, as amended by E-25246, E-25321
December 29, 1966	8	E-24581
January 23, 1967	7	E-24667
March 7, 1967	10	E-24828, as amended by E-24933, E-24586
March 10, 1967	12	E-24845
March 23, 1967	12	E-24885
April 1, 1967	8	E-25001
April 12, 1967	24	E-24975, as amended by E-25269
May 12, 1967	2	E-25140
May 15, 1967	1	E-25149, as amended by E-25245
May 17, 1967	1	E-25163, as amended by E-25269
May 24, 1967	20	E-25183
June 7, 1967	35	E-25265
June 30, 1967	17	E-25370
July 18, 1967	199	E-25430, as amended by E-26220

* The tours covered are those which were approved between July 1, 1966 and March 26, 1968.

Appendix B

Date Adopted	Number of Tours Granted	Orders Approving Tours
July 25, 1967	5	E-25452
August 10, 1967	35	E-25519
August 29, 1967	1	E-25613
September 29, 1967	39	E-25762, as amended by E-25941
September 29, 1967	52	E-25763
October 10, 1967	10	E-25810
October 11, 1967	48	E-25821
November 14, 1967	8	E-25972
November 17, 1967	12	E-25987
December 8, 1967	7	E-26094
December 11, 1967	10	E-26103
December 21, 1967	1	E-26148
December 21, 1967	1	E-26160
December 28, 1967	63	E-26192
December 28, 1967	20	E-26193
January 3, 1968	3	E-26215
January 16, 1968	9	E-26243
January 17, 1968	6	E-26244
January 23, 1968	10	E-26271
February 21, 1968	19	E-26387
February 21, 1968	1	E-26388
February 29, 1968	32	E-26434
March 1, 1968	32	E-26440
March 4, 1968	1	E-26452
March 6, 1968	13	E-26477
March 6, 1968	1	E-26480
March 12, 1968	39	E-26504
March 11, 1968	245	E-26496
March 13, 1968	20	E-26511
March 21, 1968	52	E-26551
March 22, 1968	22	E-26564
March 26, 1968	1	E-26576

1967:
ve Rent-a-Plane.
N.A. makes the traveler's lot a lot easier.

erseas
ular
ets.
n-

through travel agents to fraternal and social clubs, or business organizations. Just about everybody belongs to some organization like Rotary. Or the Ladies Auxiliary. Or a ski club or a professional association. Any group like these can use Rent-a-Planes to get to conventions or vacations (Affinity Charter).

Business organizations may use Rent-a-Planes to take winners of sales incentive contests on vacation trips (Single Entity Charter).

What about people who don't belong to a group?

No problem. Travel agents use Rent-a-Planes to jet individuals on package tours at incredibly low prices, too (Inclusive Tour Charter).

You'll like working with a travel agent.

Because it's no work at all. For you. He arranges hotels, meals, sightseeing, the works. He even advises you on getting passports, customs, tipping, all the little details of your trip.

He's a big help in helping us make the traveler's lot a lot easier. So give him a call and ask him about O.N.A. Rent-a-Planes. You'll be glad we took the rent-a-car idea. And got it off the ground.

Overseas National Airways
It makes the traveler's lot a lot easier.

JFK International Airport. N. Y.
(212) 656-8500

Tokyo • Hong Kong • Seoul • Okinawa • Saigon

*Fare estimated on full charter load back-to-back round trip.

©O.N.A. 1967

55

G-1

APPENDIX C
(Reproduced from New York Times Magazine, December 10, 1967, page 55)

1967: the Rent-a-Plane

O.N.A. makes the traveler's lot a lot easier.

Rent-a-cars look like regular cars. And Overseas National Airways Rent-a-Planes look like regular planes. Because they're big, new DC-8 and DC-9 jets.

Regular planes are flown by pilots who meet incredibly rigid Federal Aviation Administration standards. So are Rent-a-Planes. Regular planes have lovely stewardesses serving lavish food and liquor. So do Rent-a-Planes. So O.N.A. Rent-a-Planes are just like regular planes, right? Wrong.

Because O.N.A. Rent-a-Planes make the traveler's lot a lot easier.

They make things a lot easier on your pocketbook. O.N.A. Rent-a-Planes can fly your group virtually anywhere and back for 25 to 60%* less than you'd pay for the cheapest round-trip ticket on a regular plane. London, Madrid, Paris or Frankfurt for example. Or maybe Las Vegas, Hawaii, Sun Valley, Curacao or the Bahamas. You name it. (That's another thing we do to make your lot easier: fly your group anywhere that's got a jet airport. From anywhere that's got a jet airport).

How do O.N.A. Rent-a-Planes work?

It's simple. We rent our Rent-a-Planes directly through travel agents to fraternal and social clubs, or business organizations. Just about everybody belongs to some organization like Rotary. Or the Ladies Auxiliary. Or a ski club or a professional association. Any group like these can use Rent-a-Planes to get to conventions or vacations (Affinity Charter).

Business organizations may use Rent-a-Planes to take winners of sales incentive contests on vacation trips (Single Entity Charter).

What about people who don't belong to a group?

No problem. Travel agents use Rent-a-Planes to jet individuals on package tours at incredibly low prices, to

You'll like workin

Because it's no work hotels, meals, sightseei vises you on getting pa the little details of your

He's a big help in he lot a lot easier. So give O.N.A. Rent-a-Planes. rent-a-car idea. And go

Overseas Nat

It makes the travel

EUROPEAN: London • Frankfurt • Milan • FAR EASTERN: Taipei • Tokyo • Hong Kong • Seoul • Okinawa • Saigon

*Fare estimated on full charter load back-to-bac

"What to look for when you sign up for a group charter flight."

SAYS STAN DELAPLANE (THAT TRAVELING MAN)*:

"You belong to a club or some organization. And now you hear about those charter flights. The friends whose 'club chartered a plane and went to Europe for practically nothing.'

"I'd say each week I write fifty, a hundred letters—well, about a fourth of my reader mail asks something about charters.

"It's a daydream word. Those lovely mental pictures of flashing blue seas off Hawaii. Smoke-blue twilights in Paris in autumn. 'If I could get on one of those club things. That won't cost much. Why, we could fly to . . . . . .

"Group charters don't work for everybody. You don't just go down, sign up and ship out. But people in clubs—fraternal and employee organizations, bird watchers—can travel in their own chartered aircraft. At much lower costs. Here's how it works.

"The charter airline is usually chosen by a committee of the club. Usually on the advice of a travel agent—he's manager for your trip.

"I would still ask the committee to look into a few questions. (After all, it IS your trip.)

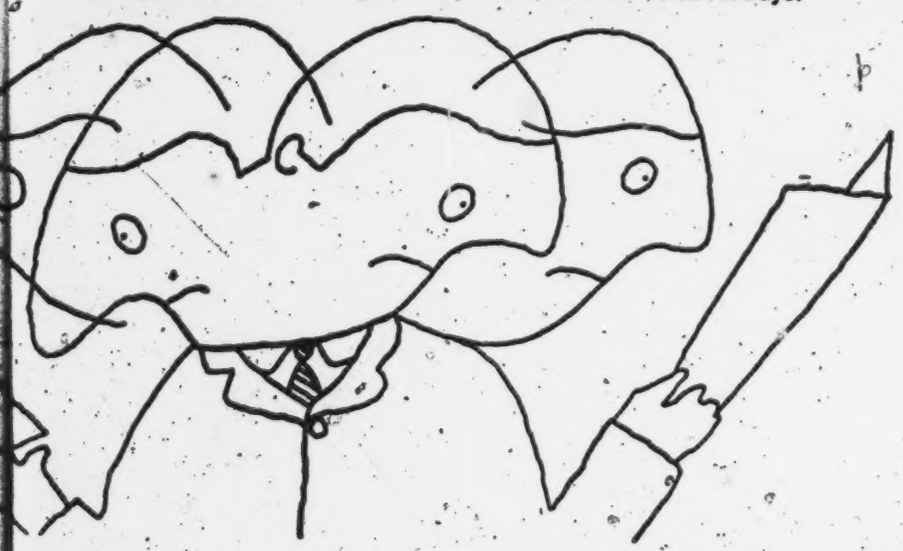
"How about this airline? What other groups have bought charters from them? Have they got some 'satisfied customer' mail? (They should.)

"What kind of airplane are you flying on? (The big late model jets have it all over the earlier ones.)

"How many people are they putting into the plane? They tell me 165 is the good number. Any more, you're out of leg room. Any less, you can't get the good price. (I've heard of planes jammed with 200.) Once, I sat with knees jammed under my chin for twelve hours at a clip. (I thought they'd have to hang me in a steamy bathroom to get me straightened out.)

"These are the questions they ask me. And at the right, I've passed them to World Airways."

*Stan Delaplane is a Pulitzer prize-winning reporter. He writes a syndicated column. Answers several hundred reader questions each week. And travels, travels, travels (more than half the year) to the glamor datelines of the world.



WORLD AIRWAYS CLEARS UP SOME QUESTIONS ON CHARTER AIRLINES:

Q. What is a charter airline, anyway?

A. What's a chartered limousine service? Same sort of thing. World Airways specializes in taking people where they want to go—in comfort and style—by the planeload, instead of a seat at a time. The U.S. government has selected certain airlines and granted them permanent certification as "U.S. Supplemental Carriers." That is, charter airlines. World Airways is the largest of these. World flight crews are as much at home landing at Tokyo or Tegal as they are at Tampa.

Q. Can we fly from our own airport?

A. Yes—if your airport can handle the big jets. Lines like World can usually take you non-stop from where you are to where you want to go. You don't have to travel 500 miles just to board your charter jet.

Q. Is the plane the newest model jet?

A. Positively—if you book on one of the leading charter airlines like World. World, for example, has a fleet of fifteen Boeing jets—including the largest and fastest 707 Intercontinental fan jets and the equally new 727 tri-jets. EVERY ONE BRAND-NEW!

Q. What's this I hear about people getting stranded?

A. That doesn't happen on a U.S. Certificated Supplemental Carrier. When you charter an aircraft, it's yours—no matter what U.S. airline it comes from. World Airways has constantly maintained an outstanding on-time record, and is the only airline to have won the coveted Award of Honor for safety from the National Safety Council for each of the last three years.

Q. How's the food?

A. Marvelous! On a World Airways charter, you'll enjoy excellent dining, including delicious salads and entrees, wines, cordials—in-between-meal snacks—and of course, cocktails of your choice. All served by six of the most gracious hostesses you've ever seen!

Q. What about flight crews on charter airlines?

A. World employs more than 250 full-time flight crew members and more than 250 hostesses. World operates its own school for additional and continuing training, and the standards are actually higher than the U.S. government requires.

Q. Is chartering a jet complicated? How do we get started?

A. Have your club secretary or president call your travel agent, or World directly, for charter information and aircraft availability. Remember—World is a *charter* airline—and the only way you can enjoy the delights of charter flight is if your organization charters. Or you can now buy one of the new "packaged" inclusive tours through your travel agent. Travel agents call these "ITC's." You, as an individual, buy a complete tour including transportation, hotels, sightseeing and transfers. But call your travel agent first—he's your travel friend.

WORLD AIRWAYS

WORLD'S LARGEST CHARTER AIRLINE

For information about charters, call your travel agent, or mail coupon.
World Airways Dept. N1112
Oakland International Airport, Oakland, California 94614

Please contact me about chartering an aircraft for my group:

Organization or Club Name _____

Headquarters Address _____

Your Name _____

Your Address _____

City _____ State _____ Zip _____ Telephone _____

We are interested in going to ☐ Europe ☐ Hawaii ☐ Orient Other _____

World Airways is a U.S. Certificated Supplemental Carrier listed on the New York and Pacific Coast Stock Exchanges.

(Reproduced from Travel Section, New York Times, November 12, 1967, page 25)

(Reproduced from Section F, Los Angeles Times, February 4, 1968, page 20)

America's new way to "Go Hawaii"

Save up to $125 per couple* on Berry Private-Jet Vacations

Now you can jet to Hawaii at low charter prices! See and do everything and save big money! And still enjoy Berry more-fun-for-your-money extras: fun aboard the World Airways Boeing Jet, sightseeing the Neighbor Islands, superior hotels, gala parties and entertainment.

You set down in Hilo; spend about half of your time in the Neighbor Islands; half in Honolulu and Waikiki. There's a sightseeing cruise to Pearl Harbor and to Sea-Life Park. Lots more sightseeing and plenty of free time on your own.

Price includes air fare, hotels, extras, tips, transfers, a Berry escort. Get full details now!

*Compared to identical arrangements you could make on your own.

DEPARTURES EVERY WEEKEND FROM SAN FRANCISCO/ OAKLAND AND LOS ANGELES

HAWAII, and the Neighbor Islands

8 days San Francisco or 9 days Los Angeles .....from **$359**

15 days San Francisco or 16 days Los Angeles .....from **$459**

PRICES SHOWN ARE PER PERSON AND DO NOT INCLUDE TAX

Free Folders! Ask your Travel Agent or use this coupon.

BERRY WORLD TRAVEL, INC.

510 West 6th Street
Los Angeles, Calif. 90014
Ph. 627-2907

Please send me free color folders on the following:

☐ Hawaii and Neighbor Islands ☐ Orient

NAME

ADDRESS

CITY STATE ZIP

MY TRAVEL AGENT IS

The two greatest weeks under the sun... and the moon!

ALL-HAWAIIAN CARNIVAL

Via Overseas National Airways
(a certificated supplemental carrier)

7 days & nights in fabulous **HONOLULU** at Kahala Hilton, Ilikai or Hawaiian Village Hotel. 5 days & nights on romantic **MAUI** at the Kaanapali Beach Hotel. 2 days & nights on romantic **HAWAII** at the Orchid Island Hotel in Hilo.

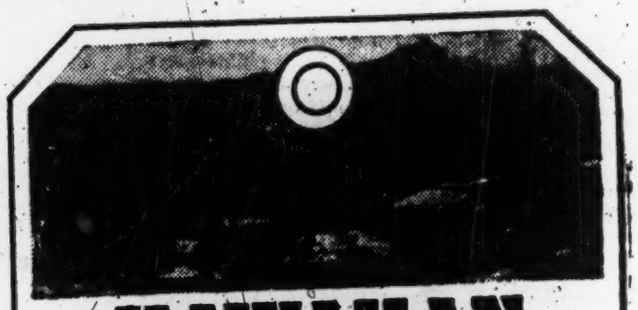
$549

PER PERSON double occupancy (plus $29.50 tax and services)

Deluxe Dining Plan — $120 additional: Breakfast & dinner each day during your entire trip at your hotel or choice of leading restaurants from list provided you.

FROM PHILADELPHIA FEBRUARY 25, MARCH 3, 10, 24, 31, MAY 5

FROM NEW YORK MARCH 3, 10, APRIL 28, MAY 26



HAWAIIAN CARNIVAL

Via Trans International Airlines
(a certificated supplemental carrier)

3 days & nights in **LAS VEGAS** at the Thunderbird Hotel. 7 days & nights in **HONOLULU** at the Ilikai or Hilton Hawaiian Village. 3 days & nights in **SAN FRANCISCO** at San Francisco Hilton, Del Webb's Towne House or Jack Tar Hotel.

$599*

COMPLETE PER PERSON double occupancy (plus $19.50 tax and services)

*Low price includes all breakfasts and dinners at your hotel or at your choice of top restaurants from list provided

FROM PHILADELPHIA APRIL 13, MAY 5

FROM NEW YORK FEBRUARY 26, MARCH 11, 23, 25, 31, APRIL 14, MAY 4, 5, 12, 19

Luxury Dining Program

Whether it is included in your Hawaiian Carnival or you choose it as a special option on your All-Hawaiian Carnival you will enjoy truly gourmet meals. Arrangements have been made with the finest restaurants and your hotels in the cities you will visit for complete breakfasts every day and elegant dinners every evening. In Honolulu the famous restaurants include Duke Kahanamoku's, The Red Vest or Tahitian Lanai. Other equally renown restaurants have been chosen in all cities you will visit.

Just Look at the Fantastic Features Included on Both Great Carnival Trips

- Jet Flights All The Way
- Deluxe Hotels Throughout
- Sightseeing Tour and Cocktail Parties
- Traditional Flower Lei Greeting
- Expert Briefing Session in Each City
- Fully Escorted
- Never Any Regimentation

For more information and additional departure points and dates SEE YOUR TRAVEL AGENT, MAIL THIS COUPON OR CALL AITS COLLECT

AITS

AMERICAN INTERNATIONAL TRAVEL SERVICE PI
1518 Walnut St., Room 907, Philadelphia, Pa. 19102
(215) KI 6-3450

SEND FOLDER ☐ ALL-HAWAIIAN CARNIVAL ☐ HAWAIIAN CARNIVAL
☐ HAVE YOUR REPRESENTATIVE CALL ME

NAME_____

STREET_____ PHONE_____

CITY_____ STATE_____ ZIP_____

C-4
(Reproduced from Travel Section, Philadelphia Inquirer, February 4, 1968, page 27; also appeared in New York Times, February 8, 1968, page 53)

HAWAII

For the price of someplace ordinary, we'll give you

Hawaii

$559 plus tax

Oahu, Hawaii, Maui

Weekly Flights From New York

We at Trade Wind Tours are Hawaiians. We know our Islands as only a native can know them. That's why we're able to offer a tour like this at a price like this. Compare what you get! Round-trip champagne flights from the East Coast to Hawaii aboard Overseas National Airways' DC-8 Fan-Jets. ONA is a permanently certificated supplemental air carrier. 15 days in Hawaii's three most beautiful Islands—Oahu, Maui and Hawaii—with optional tour extensions to Kauai, the garden island. First-class hotel accommodations everywhere you stay. All inter-Island transportation aboard Aloha Airlines. All ground transfers, plus a sea cruise of the Kona Coast. Sightseeing tours of Honolulu's Sealife Park and Pearl Harbor, Lahaina, Hilo and the Islands you visit. Free use of a Kodak Instamatic Camera while you're in Hawaii. Trade Wind Tours personnel at your service throughout Hawaii. And a lot of little extras... beginning with a flower lei at the airport.

Call your travel agent for all the details. After-Hawaii, everyplace else is someplace ordinary.

Inter Island—Trade Wind Tours
The Hawaiian People

Inter Island—Trade Wind Tours
580 Fifth Avenue—Rm. 708
New York, N.Y. 10017
Send me all the information. I'm interested.

Name_____
Address_____
City_____ State_____ Zip Code_____
My travel agent is_____

HAWAII

An exciting, exotic once-in-a-lifetime experience!

Hawaiian adventure

The most DELUXE Hawaii Program of them all!

2 WEEKS **$499**

Round Trip Via Comfortable Boeing 707 Jets
DEPARTURES FROM NEW YORK
March 24 • April 7 • April 28

per person double occupancy plus $19.50 tax and services

LAS VEGAS
4 NIGHTS . . . at the fabulous NEW FRONTIER, Las Vegas' newest and most deluxe hotel! Sun—Swim—Play—in America's greatest playground!

HONOLULU
7 NIGHTS . . . at the luxurious new ILIKAI HOTEL or magnificent KAHALA HILTON ($29.50 supplement) with Lei Greeting, Cocktail Party, Sightseeing Tour!

SAN FRANCISCO
3 NIGHTS . . . at the luxurious ST. FRANCIS (Mar. 24) or superb HILTON (Apr. 7) or world-famous FAIRMONT (Apr. 28) with Deluxe Sightseeing Tour!

THE ONLY HAWAII PROGRAM OFFERING TWO-DAY OPTION (from Las Vegas) IN LOS ANGELES AT THE SUPERB CENTURY PLAZA HOTEL! via Standard Airways—a Permanently Certificated Supplemental Air Carrier

WITH GOURMET DINING PLAN
In Las Vegas, breakfasts and dinners, including big-name dinner show; in Honolulu and San Francisco, breakfasts at hotel and lunches or dinners at choice of internationally famous restaurants ..... $100 additional

For 4-color brochure and information—call us collect—or call your own travel agent

COLPITS Travel Center FOREST HILLS 97-77 Queens Blvd. 275-0565	COLPITS Travel Center NEW ROCHELLE 271 North Ave. 636-0600	COLPITS Travel Center RED BANK, N. J. (Shrewsbury) 476 Broad St. 842-4900	COLPITS Travel Center NORWICH, Conn. 112 Lafayette St. 822-2300	COLPITS Travel Center BOSTON 85 Franklin St. HA 6-6200	ROSAL Travel Service The Benson East Jenkintown, Pa. TU 8-1600	ROSAL Travel Service 25 N. 2nd St. Harrisburg, Pa. 236-6163

or see your authorized GOGO Travel Agent, or

Hawaiian adventure
2475 N. 54th Street • Philadelphia, Pa.
(215) TRinity 7-1377

HAWAII

2 Full Weeks on Three Hawaiian Islands

all-HAWAIIAN CARNIVAL

Via Overseas National Airways
(A certificated supplemental carrier)

7 days & nights in fabulous
HONOLULU
at elegant Kahala Hilton or Hilton Hawaiian Village
5 days & nights on beautiful
MAUI
at the Kaanapali Beach Hotel
2 days & nights on romantic
HAWAII
at the Orchid Island Hotel

Just look at the fantastic features all included
Jet flights all the way • Deluxe hotel accommodations • Sightseeing tour and cocktail party • Expert briefing session on each island • Traditional flower lei greeting • All transfers • Fully escorted • Optional dining program available

$549
Per person • double occupancy
Plus $29.50 tax and services

FROM NEW YORK MARCH 3, 10, 31, APRIL 14, MAY 5, 26

For more information and additional departure points and dates
SEE YOUR TRAVEL AGENT, MAIL THIS COUPON, OR CALL COLLECT:
Send folder ☐
Have your representative call me ☐
AMERICAN INTERNATIONAL TRAVEL SERVICE
609 Fifth Ave., N.Y., N.Y. 1001 (212) 752-4364.
Name_____
Street_____ Phone_____
City_____ State_____ Zip_____

HAWAII

New Individuals Can Fly at ORGANIZATION RATES to

HAWAII
and the Neighbor Islands

15 Days 4 ISLANDS! 5 NIGHTS! OAHU HONOLULU, HILO, MAUI & KAUAI **$599**

INCLUDES 7 NIGHTS IN HONOLULU and 6 NIGHTS in the OUTER ISLANDS

Now you can do it! New government rulings allow individuals to fly at "organization rates" . . . at far less cost than ever before. So much less that Liberty tosses in trips to the neighbor islands, superior hotels, sightseeing excursions, parties, even tips. Liberty makes sure you don't miss a thing worth seeing . . . breathtaking tropical gardens, sun-splashed beaches, quaint villages, volcanic wonders, native ceremonies, historic landmarks.

INCLUDES: Round Trip Jet, transfers in Hawaii, all tips for baggage on and off planes and in and out of hotels, Jet powered air between Honolulu and the outer islands, Festive "Aloha" party at airport with flowered lei, Cocktails and dinner aloft with World Airways, Travel Tote & Happy coat, SUPERIOR HOTELS: Hawaiian Village of Honolulu; Kauai Surf; Sheraton-Maui; Kona Inn or Hilton; and the new Hanilea, Hilo . . . Circle Island Tour on Oahu, Pearl Harbor Cruise, sightseeing on Kauai, Maui, Kona and Hilo, plenty of FREE TIME!

Rates are per person, dbl. occ., plus tax

CALIFORNIA
and the GOLDEN WEST

• SAN FRANCISCO • YOSEMITE • MISSION TRAIL • LOS ANGELES • LAS VEGAS

15 Days $359

Save up to $296 per couple! Round trip Jet, Travel Tote, cocktails and dinner aloft with World Airways, SUPERIOR HOTELS in San Francisco, Merced, Fresno, Santa Maria, Los Angeles and Las Vegas. Lots of sightseeing including Muir Woods, Golden Gate, Palo Alto, Monterey, Pebble Beach, Yosemite, San Luis Obispo, Beverly Hills, Hollywood, movie studio, Knott's Berry Farm, DISNEYLAND, Lake Arrowhead. All airport and hotel transfers and all tips in and out of hotels. Plenty of Free Time!

Rates are per person, dbl. occ. . . . plus tax

LOW CHARTER RATES! **16** Days in the **ORIENT**

• HONG KONG • TOKYO • KYOTO • TAIPEI

Includes All These Features!

- ROUND TRIP JET
- Happy Coat and Travel Tote
- Cocktails, hors d'oeuvres, 1 breakfast, 2 luncheons and 2 dinners aloft with World Airways
- Superior Hotels all the way
- All B.reakfasts
- Chinese Dinner in Hong Kong
- Sightseeing in Kowloon, Tokyo, Nara, Kyoto, Taipei
- Shochiku Girls Theatre Show
- Sightseeing in Kowloon, the New Territories including the "Bamboo Curtain"
- Visit Nara Deer Park and the Shrine of 1000 Steps
- Dinner Party in Taipei
- 25 meals included, with tips
- All Transfers: airport-hotels
- All tips for baggage on and off planes, and in and out of hotels
- FREE TIME and "extras"!

Save $435 per couple!
$1199
per person, dbl. occ., plus tax

HAWAII
and the GOLDEN WEST

SAN FRANCISCO, LOS ANGELES & LAS VEGAS

15 Days $589

Save $365 per couple! Includes: Round trip Jet to Hawaii, travel tote and happy coat aloft while enjoying cocktails and dinner with World Airways. Excellent hotels and comprehensive sightseeing including Muir Woods, Golden Gate, Knott's Berry Farm, Disneyland, Circle Island tour in Honolulu, Pearl Harbor Cruise, Special dinner in the Flamingo Room, Las Vegas. All transfers from airports to hotels and all tips for baggage on and off planes and in and out of hotels.

Rates are per person, dbl. occ. . . . plus tax

MEXICO

9 DAY "El Cortez" Package Special
Independent travel, leave any day! Including round trip JET via Aeroflotes or Eastern Airlines, fine hotels, private car transfers & sightseeing. Mexico City, Xochimilco, Bullfights, Pyramids, Cuernavaca, Taxco and Acapulco or Puerto Vallarta. Some meals. from $375

15 Day "Montezuma" Package Trip
Including round trip JET via Eastern Airlines, fine hotels, meeting service, private car transfers and sightseeing. Mexico City, Bullfights, Xochimilco, Ballet, Pyramids, University City, Cuernavaca, Taxco, Iztapan, San Juan Puras, Morelia, Patzcuaro, Janitzio, Toluca, and Acapulco or Puerto Vallarta. Some meals . . . . . from $333

Rates are per person dbl. occ. **REDUCED RATES for GROUPS & CLUBS . . . CALL 564-6064**

OPEN SUNDAYS **LIBERTY TRAVEL** OPEN WEEKDAYS

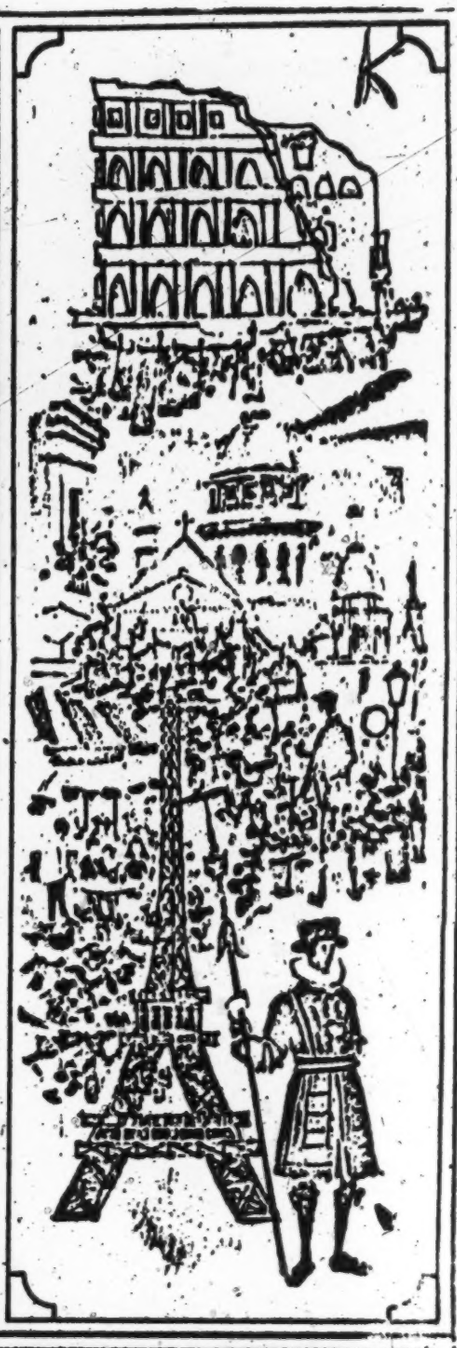
TIMES SQUARE 152 West 42nd at Broadway LO 4-0822	GRAND CENTRAL 299 Madison Ave. Corner 41st St. MO 1-0828	QUEENS BLVD. Cor. 67th Ave. FOREST HILLS TW 8-6500	BROOKLYN Kings Highway Corner E. 12th WY 8-7300	BROOKLYN 971 Flatbush Avenue IN 8-8400	BROOKLYN 180 Montague St. at Court JA 2-1700	GARDEN CITY 736 Franklin Ave. at Stewart PI 6-8282	MANHASS 1200 Nort
BRONX Concourse Corner 167th CY 5-5800	RIVERDALE 3648 Riverdale Ave. at Styvesant KI 8-2000	WESTCHESTER 185 E. Post Rd. WHITE PLAINS WH 9-0500	BARNET 50 E. Route 59 near Nanuet OPENING SOON	NEW JERSEY Route 4 & Main RIVER EDGE HU 9-8300	PHILADELPHIA Center City 1422 Chestnut LO 8-4300	PHILADELPHIA Cheltenham Shopping Center HA 4-1800	MERRICK 205 City at Sun MO 4-13

GARDEN CITY, WHITE PLAINS and BORO HALL OPEN SUNDAYS FOR TELEPHONE SERVICE ONLY

(Reproduced from Travel Section, New York Times, February 11, 1968, page 13; All-Hawaiian Carnival advertisement also appeared in The Philadelphia Inquirer, February 14, 1968, page 15)

EUROPEAN CARNIVAL

3 DAYS IN
LONDON
4 DAYS IN
Paris
7 DAYS IN
ROME



A NEW AND WONDERFUL WAY TO SEE THE OLD WORLD!

$699

via
Overseas National Airways
A Certificated
Supplemental Air Carrier

AMERICAN INTERNATIONAL

TRAVEL SERVICE

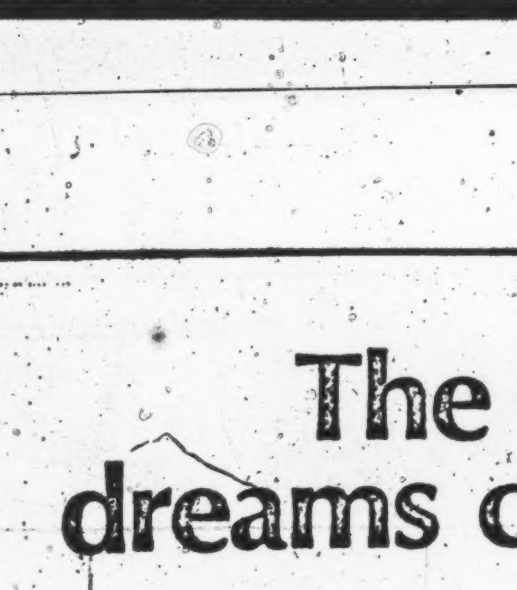
The trip of your dreams comes true!

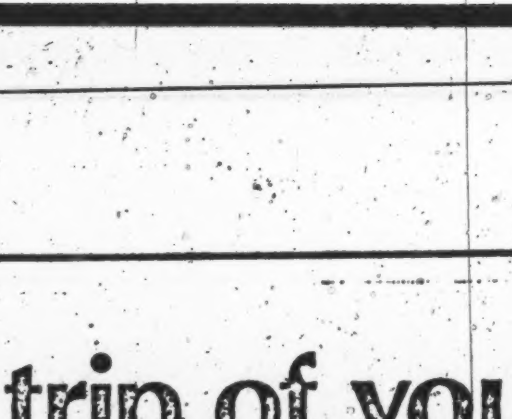
EURO CAR

3 DAYS, 3 NIGHTS IN LONDON

What a way to start off your two fabulous weeks — with three days and nights in London — the one city that personifies the charm of the Old World.

- ☐ You'll jet non-stop to London.
- ☐ The luxurious London Hilton or Royal Garden Hotel is yours for 3 days and nights.
- ☐ Sightseeing tour of the town included.
- ☐ You'll enjoy sumptuous breakfasts at your hotel, at no extra cost.
- ☐ Be the guest of the glamorous Victoria Sporting Club for dinner. (Try your luck at the Casino.)
- ☐ Memorable dinners nightly at London's leading restaurants, all included.



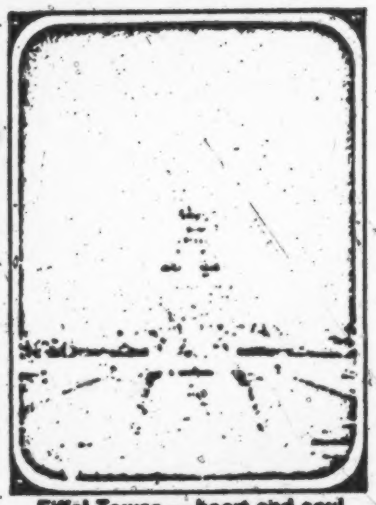


ABOVE—London's Exciting Piccadilly Circus

LEFT—The Knott Gardens at Stratford on Avon

RIGHT—Tower Bridge and the famous Royal Guard

The Montmartre



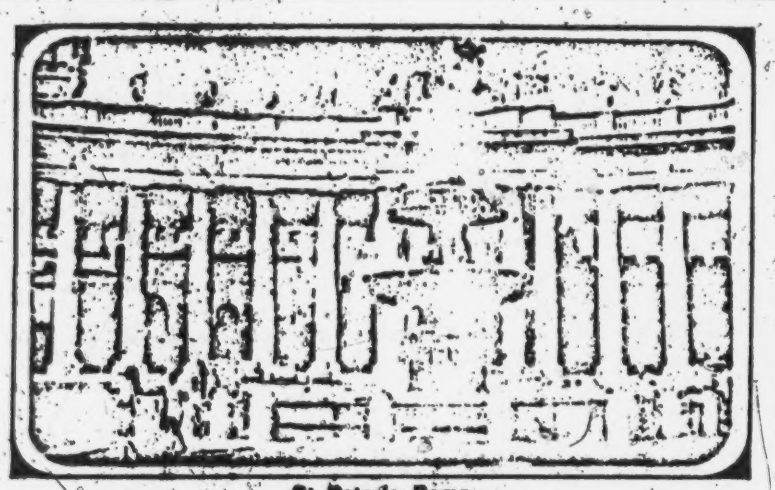
Eiffel Tower — heart and soul of Paris

4 DAYS, 4 NIGHTS IN Paris

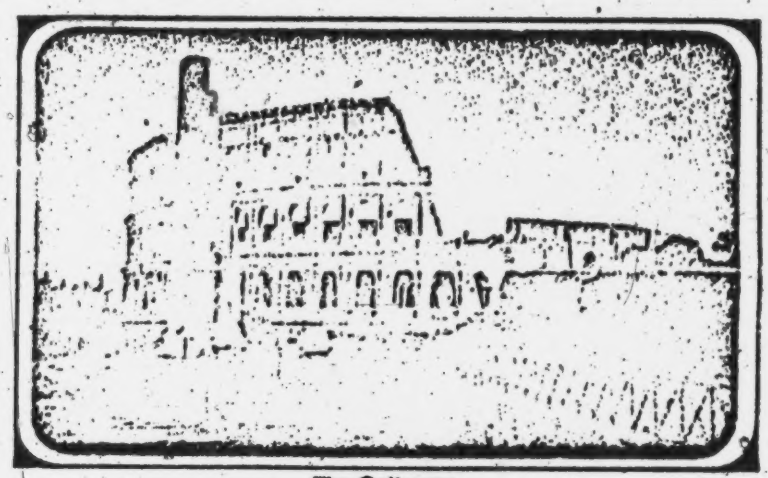
Four days and four nights in thrilling, historical and cosmopolitan Paris will complete the first week of your never-to-be-forgotten trip. You'll have a full opportunity to savor the variety of delightful and unusual diversions of this beautiful city.

PEAN VAN

With all this included in your fare!



St. Peter's, Rome



The Coliseum

7 DAYS, 7 NIGHTS IN ROME

From the time of your arrival until you say "Arrivederci" at the Farewell-to-Rome cocktail party and banquet a week later, your visit to this glorious land is an extraordinary experience. The world's most historical city, with incomparable cultural and religious landmarks, also features some of the continent's most outstanding restaurants and unusual entertainment.

- ☐ Flight from Paris to Rome.
- ☐ Seven marvelous nights at either the Excelsior, Cavalieri Hilton or Grand Hotel.
- ☐ Sightseeing tour of the Eternal City.
- ☐ You'll be guest of your hotel every morning for superb breakfasts.
- ☐ Each evening you dine at your choice of Rome's most notable restaurants, all included.
- ☐ You'll connect with your non-stop jet flight home.

Pleasant flight from London to Paris.

Four nights at the incomparable Paris Hilton, Hotel Continental or other deluxe hotels.

Sightseeing tour of Paris.

French chef breakfasts daily as the guest of your hotel.

Dining every night at world-famous Parisian restaurants. You take your choice from an exciting list that reads like a gourmets' Who's Who. All included, of course.

Be sure to visit the Riviera

Your transportation to and from each airport in London, Paris and Rome, along with all luggage transfer, porter and bellboy tips are included.

In addition, all breakfasts and dinners during the entire 14 days are included in the one package price!

25

ABOUT THE FLIGHT — You go as a VIP all the way! Comfortable, silken-smooth flights. First class meals and beverages, and courteous hostesses to anticipate your wishes.

ABOUT LUGGAGE — All luggage (up to 44 lbs. per person, two pieces) will be transported to and from your hotel rooms and airport without charge. No waiting or tipping!

ABOUT PASSPORTS — Every person traveling abroad must have (a) valid passport, (b) smallpox vaccination within the last three years (certified on health certificate).

ABOUT REGIMENTATION — There simply isn't any! You fly as a group, but once you arrive at your destination you are free to do as you please.

ABOUT INSURANCE — For the convenience of European Carnival participants, a complete "Vacation Insurance Plan" has been arranged through the S. M. Liner Insurance Agency, and is available on an optional basis. This specially designed policy covers baggage, sickness before and during the trip, life and accident, etc. In addition, as on all regularly scheduled flights, insurance may be purchased at the airline counter at the time of departure.

ABOUT CANCELLATIONS — Cancellations accepted up to four (4) weeks prior to departure with full refund. The charge for cancellation after four (4) weeks of departure is one hundred dollars ($100). An additional $100 may be charged for any cancellation within seventy two hours prior to flight departure. This charge will be made only if your airline seat can not be filled by a qualified replacement. Cancellation of the tour by the tour operator is permissible only by reason of factors beyond the control of operator, including but not limited to governmental action, strikes, and acts of God. In the event of cancellation by the operator, the operator's liability shall be limited to a refund of all payments made by the participants.

ABOUT MEALS — For your evening meals, the finest restaurants have been carefully selected in London, Paris, and Rome. You may eat at any of them when you wish, with whomever you wish. Breakfasts at your hotels are full and complete (meat, eggs, and fish, etc.).

ABOUT BEVERAGES — As per the regular European custom, tea, coffee, and mineral waters are not included with meals.

ABOUT CHILDREN — Children under 12 years, accompanied by an adult and sharing the same room, $100 less.

ABOUT TIPPING — Meal tipping in hotels has been included. Tipping in restaurants has not been included so that your service might not suffer. All bellhop and porter tips for transfer of luggage are prepaid.

AITS reserves the right, whenever necessary, to substitute comparable hotel accommodations.

RESPONSIBILITY:

AITS, Inc., d.b.a. American International Travel Service is responsible to the participants for supplying the services and accommodations offered to the participants as stated in this folder but, as to all services furnished, including supplemental air transportation, it expressly disclaims all responsibility or liability of any nature whatsoever for loss, damage, or injury to property or person due to any cause whatsoever occurring during a tour under its management, sponsorship, procurement, or otherwise. All tickets, coupons and orders are furnished and issued subject in all respects to the foregoing and to any and all terms and conditions under which the means of transportation and/or other services provided thereby are offered and/or supplied. AITS, Inc. d.b.a. American International Travel Service reserves the right in its discretion to change or alter any part of the itinerary without notice and for any reason, but in the event of a substantial reduction in services rendered, a proportionate refund will be made to tour participants. The airlines providing air transportation are not to be held responsible for any act, omission or event during the time that passengers are not on board their aircraft or conveyances. Tour participants agree that AITS, Inc., d.b.a. American International Travel Service, has no responsibility or liability of any nature whatsoever for loss, damage or injury to property or person resulting from the provision of supplemental air transportation. The supplemental air carrier provides insurance for the protection of passengers in conformance with part 208.33 of the Board's Economic Regulations.

In consideration of payment enclosed American International Travel Service (AITS) agrees with the undersigned to provide the tour described in this folder subject to the terms, conditions and limitations as set forth in this folder and incorporated herein by reference. In the event the supplemental air carrier with whom operator has a contract to perform the air transportation described via DC-8 aircraft is delayed in performance or unable to perform with such aircraft, the provisions of Part 208.33 of the Civil Aeronautics Board's Economic Regulations shall govern the rights and obligations of the parties.

Gentlemen:

Enclosed please find $..... as deposit ☐ .....as full payment ☐

Make check or money order payable to:

$100 minimum deposit per person. Final payment due 30 days before departure.

NAME _____

ADDRESS _____

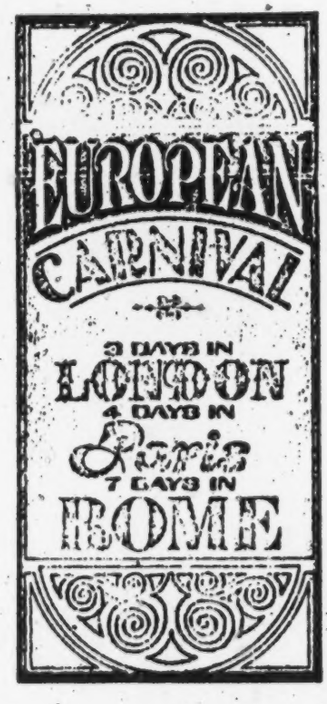
_____ PHONE _____

NAME _____

ADDRESS _____

_____ PHONE _____

Return this reservation immediately to insure space. Reservations limited. Rates based on double occupancy.



Low Charter Rates

NOW AVAILABLE TO ALL!

Inclusive Tour Charters granted by the Civil Aeronautics Board open to all travelers, tremendous charter savings. YOU SAVE CLOSE TO $200 per person and you get JET FLIGHTS – Top FIRST CLASS HOTELS – COMPLETE TOUR PROGRAM.

Your Trans International Airlines DC8-F Fan Jet is one of the newest and fastest Douglas Jet Liners. You will fly with the assurance that you are in the hands of one of the most experienced airlines in jet charter travel; an airline that for 17 years, and for many millions of passenger miles, has maintained a perfect safety record; an airline that operates completely under the authority of applicable Federal Agencies.

Top First Class Hotels are featured everywhere:

San Francisco – Jack Tar
Honolulu – Sheraton Princess Kaiulani
Las Vegas – Thunderbird

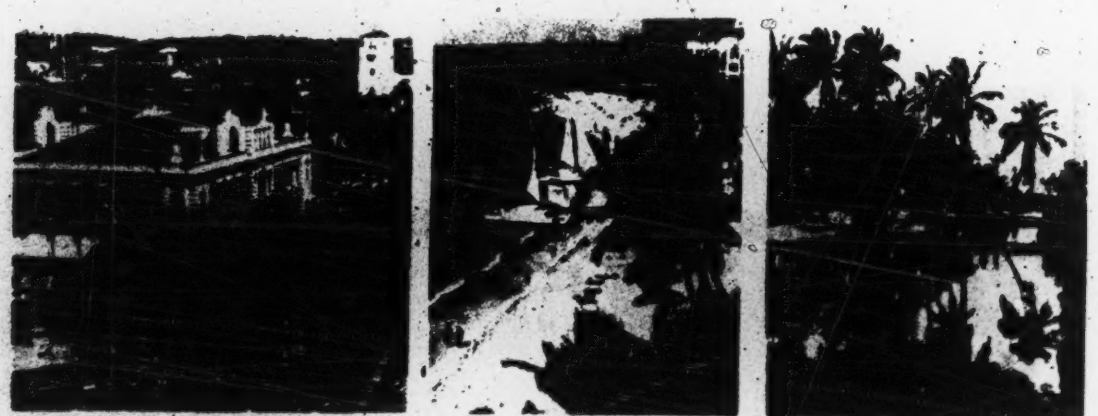
For passengers desiring superior rooms including: Guaranteed Ocean Side–Lanai Rooms at the Ilikai or Princess Kaiulani or Air-Conditioned Diamond Head Tower Rooms (either side) at the Princess Kaiulani – there will be a limited number of these available at an additional cost of $25.00 per person. Superior rooms in San Francisco and Las Vegas are included. Please make sure to indicate your preference at the time of registration.

An Optional "Dine-Around" meal plan is also available which will allow you to dine at your resident hotels or at restaurants chosen for their excellent cuisine including full course breakfast and gourmet dinner daily for $100.00 additional per person, including tax. The Dine-Around Plan will not be available after start of tour.

RATES

FROM ALL CITIES LISTED EXCEPT BOSTON

Each of two	$459.45
Tax	16.00
FROM BOSTON	
Each of two	$471.28
Tax	16.00
OPTIONAL SUPPLEMENTS	
Single room	$ 85.00
Ocean-Side or Diamond Head rooms in Hawaii	25.00
Dine-Around Plan	100.00
1-Day Outer Islands Tour	79.95
Grand Canyon Tour	48.00
Los Angeles Tour	45.00



TOUR CONDITIONS

WHAT IS INCLUDED: Round trip jet air transportation to Hon via Trans International Airlines jet charter flight, based on ITC; hotel accommodations at hotels shown, based on two p to a twin-bedded room with private bathroom; meals in (champagne served on transcontinental flights only), tran between hotels and airports, handling of one piece of bag throughout, all state and transportation taxes, experienced Escort.

NOT INCLUDED: Meals, except during flights; insurance, lau wines, liquors; and other expenses of a purely personal na all optional sightseeing as shown. Passengers with more one suitcase will be charged $4.50 per additional bag for han throughout. Personal effect and trip insurance is not include available at nominal cost.

DEPOSITS AND CANCELLATIONS: A deposit of $100.00 per son must accompany each booking in order to secure the vations. In case of cancellation less than 30 days before depa you will be charged for any unrecoverable expenses unle substitute is found. No refunds are possible for any un services.

BAGGAGE: The tour operator, or his agents, shall not be re sible in any way for loss or damage to passenger's baggage. weight allowance is 44 lbs. Any excess baggage is at passen own expense.

THESE TOURS WERE PLANNED IN ACCORDANCE, AND WIL OPERATED, IN FULL COMPLIANCE WITH THE NEW INCLU TOUR CHARTER REGULATIONS APPROVED BY THE CA WASHINGTON TOUR RATES INCLUDE CHARGES FOR F NING AND OPERATION AND ARE SUBJECT TO CHANGE W OUT NOTICE.

ELIGIBILITY: Anybody is eligible to participate in any of tours.

THE TOUR OPERATOR reserves the right to modify the itin as may be required by circumstances in the interest of passengers.

RESPONSIBILITY

All arrangements for accommodations, transfer and sightseeing in connection with this tour have been made by Male Travel Bu Inc., which company shall hereafter be referred to as the "opera The "operator" hereby gives notice that arrangements made with person(s) or company(ies) used in connection with this tour have made by the "operator" as agent for the passenger upon the ex condition that the "operator" shall not be held liable for in damage, loss, accident, delay or irregularity which may be cause any company or person employed in the operation of said tour.

The airline concerned is not to be held responsible for any act, sion, or event during the time the passengers are not on boar plane or conveyance. The charter contract entered into with the a concerned shall constitute the sole contract between the airline operator, and the purchaser of this tour, and/or passenger, for th portion hereof.

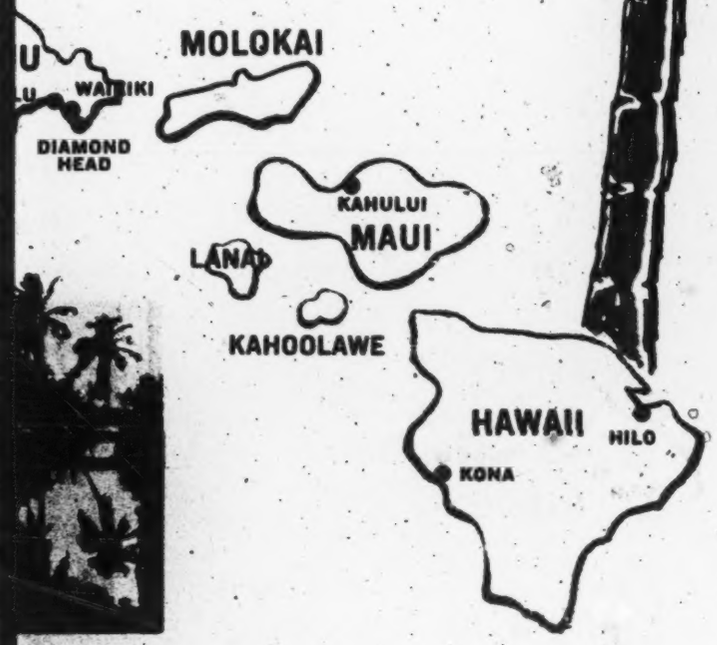
SEE YOUR TRAVEL AGENT

ates

First Class Hotels are
ed everywhere:
San Francisco – Jack Tar
Honolulu – Sheraton Princess Kaiulani
Las Vegas – Thunderbird

ssengers desiring superior rooms including:
nteed Ocean Side–Lanai Rooms at the Ilikai or
ss Kaiulani or Air-Conditioned Diamond Head
Rooms (either side) at the Princess Kaiulani –
will be a limited number of these available at
ditional cost of $25.00 per person. Superior
in San Francisco and Las Vegas are included.
make sure to indicate your preference at the
registration.

ptional "Dine-Around" meal plan is
vailable which will allow you to dine at your res-
notels or at restaurants chosen for their excel-
uisine including full course breakfast and gour-
inner daily for $100.00 additional per person,
ing tax. The Dine-Around Plan will not be avail-
fter start of tour.



TOUR CONDITIONS

WHAT IS INCLUDED: Round trip jet air transportation to Hónolulu via Trans International Airlines jet charter flight, based on new ITC; hotel accommodations at hotels shown, based on two people to a twin-bedded room with private bathroom; meals in flight (champagne served on transcontinental flights only), transfers between hotels and airports, handling of one piece of baggage throughout, all state and transportation taxes, experienced Tour Escort.

NOT INCLUDED: Meals, except during flights; insurance, laundry, wines, liquors; and other expenses of a purely personal nature; all optional sightseeing as shown. Passengers with more than one suitcase will be charged $4.50 per additional bag for handling throughout. Personal effect and trip insurance is not included but available at nominal cost.

DEPOSITS AND CANCELLATIONS: A deposit of $100.00 per person must accompany each booking in order to secure the reservations. In case of cancellation less than 30 days before departure you will be charged for any unrecoverable expenses unless a substitute is found. No refunds are possible for any unused services.

BAGGAGE: The tour operator, or his agents, shall not be responsible in any way for loss or damage to passenger's baggage. Free weight allowance is 44 lbs. Any excess baggage is at passenger's own expense.

THESE TOURS WERE PLANNED IN ACCORDANCE, AND WILL BE OPERATED, IN FULL COMPLIANCE WITH THE NEW INCLUSIVE TOUR CHARTER REGULATIONS APPROVED BY THE CAB IN WASHINGTON. TOUR RATES INCLUDE CHARGES FOR PLANNING AND OPERATION AND ARE SUBJECT TO CHANGE WITHOUT NOTICE.

ELIGIBILITY: Anybody is eligible to participate in any of these tours.

THE TOUR OPERATOR reserves the right to modify the itinerary as may be required by circumstances in the interest of the passengers.

RESPONSIBILITY

All arrangements for accommodations, transfer and sightseeing used in connection with this tour have been made by Male Travel Bureau, Inc., which company shall hereafter be referred to as the "operator." The "operator" hereby gives notice that arrangements made with any person(s) or company(ies) used in connection with this tour have been made by the "operator" as agent for the passenger upon the express condition that the "operator" shall not be held liable for injury, damage, loss, accident, delay or irregularity which may be caused by any company or person employed in the operation of said tour.

The airline concerned is not to be held responsible for any act, omission, or event during the time the passengers are not on board its plane or conveyance. The charter contract entered into with the airline concerned shall constitute the sole contract between the airline, the operator, and the purchaser of this tour, and/or passenger, for the air portion hereof.

SEE YOUR TRAVEL AGENT

Printed in U.S.A.

Skyway-Ensign 1966

NEW! ATTACHMENT "B" JET CHARTER to HAWAII

SAN FRANCISCO and LAS VEGAS

NOW ONLY

[redacted] 47.

PLUS $16 TAX

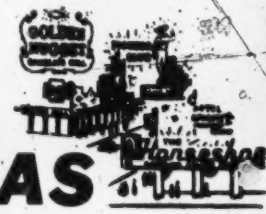
JET
DC-8F
CHAMPAGNE FLIGHTS

2 WEEKS INCLUSIVE

MANY CONVENIENT DEPARTURES

HAWAII

SAN FRANCISCO & LAS VEGAS



2 WEEK TOUR – DAY BY DAY ITINERARY

ITC-66

1st Day **FLY TO SAN FRANCISCO.** Departure from home by TIA DC 8 Fan Jet aircraft for San Francisco which is reached 5 hours later after an enjoyable flight featuring complimentary champagne and a delicious hot meal.

SAN FRANCISCO. Arrival in San Francisco and transfer to your top 1st Class hotel.

2nd Day **SAN FRANCISCO – DeLuxe City Tour** (optional). This afternoon you may take a complete and comprehensive tour of San Francisco, including the Civic Center, Mission Dolores, Twin Peaks, St. Francis residential section, Steinhart's Aquarium, Golden Gate Park, Ocean Beach, Seal Rocks and the Cliff House, Palace of the Legion of Honor, Lincoln Park, Seacliff Presidio, Palace of Fine Arts, Marina, Yacht Harbor and Fort Mason.

3rd Day **SAN FRANCISCO - MUIR WOODS - WINERY.** An optional program will be offered today to a California Winery, the majestic Redwoods of Muir Woods National Park and the picturesque town of Sausalito. Highlight of this trip is a conducted tour through one of the largest wineries in the world ending with the traditional wine tasting ritual. Evening at leisure to shop in Chinatown, ride the cable cars, dine at Fisherman's Wharf, or enjoy the magnificent view from the top of the Fairmont or Mark Hopkins hotels.

4th Day **HONOLULU.** Transfer to the airport for your 5 hour flight to Hawaii. Upon arrival at Honolulu airport, you will receive the traditional flower lei welcome. You will be transferred by chartered motorcoach to your top 1st Class hotel in Waikiki where accommodations have been reserved for you.

A briefing meeting will be held to introduce you to your fellow travelers, explain the tour program and give you all necessary information on tours, entertainment, restaurants, shops, etc.

5th Day **HONOLULU - KODAK HULA SHOW.** Today you can attend the Kodak Hula Show at Kapiolani Park. This show sponsored by Eastman Kodak offers an excellent opportunity to take still and motion pictures of Hawaiian and Tahitian Hula dances, in a delightful setting by the beach at Waikiki.

6th Day **HONOLULU - DIAMOND HEAD - SEA LIFE PARK** (optional). At approximately 9:00 o'clock, transportation will call at your hotel to commence an exciting optional tour around Diamond Head to Koko Head, the spectacular Blow Hole, Sea Life Park (admission not included) and famous Nuuanu Pali where King Kamehameha completed his conquest of the Islands. Return to Waikiki through Honolulu.

7th Day **HONOLULU - PEARL HARBOR CRUISE** (optional). We highly recommend this cruise inside the huge Naval base of Pearl Harbor. An excellent commentary is provided by the Skipper of the fateful 1941 attack, as you pass "Battleship Row." You will see the new memorial erected above the sunken U.S.S. Arizona. Sail back through Honolulu Harbor and enjoy panoramic views of Leeward Oahu with Diamond Head in the distance. Transfer to your hotel.

8th Day **HONOLULU.** This day in the islands will be at leisure so that you may acquaint yourself with your new surroundings; get your exposure to the warm Hawaiian Sun; spend the day on the golden beach of the blue Pacific, or in your hotel swimming pool.

9th Day and 10th Day **HONOLULU.** Days at leisure for swimming, surfing, outrigger canoeing and shopping.

A spectacular 1 Day Air-Land tour of all the Islands will be offered during these free days.

11th Day **HONOLULU.** At leisure until you transfer to the airport for your flight to Las Vegas where you will be met and transferred to your top 1st class hotel on the strip where accommodations are provided.

12th Day **LAS VEGAS.** The day is at leisure. The outdoor and indoor facilities of your luxurious hotel are yours to enjoy. Here you see society, stars and everyone mix in a continuous round of fun and excitement.

Tonight, you may participate in an optional, traditional midnight gala show including cocktails and superb entertainment.

13th Day **LAS VEGAS - HOOVER DAM** (optional). Today there will be an optional excursion to Hoover Dam. You drive past the fabulous war-born magnesium plant to Boulder City; stop here to see movies showing construction of the dam. Next a panoramic view of Lake Mead then on to the dam site, where ample time is allowed for complete inspection.

14th Day **LAS VEGAS.** The day is at leisure for a stroll down "The Strip" to visit the fabulous, renowned Hotel "Palaces" and Casinos. Hospitality rooms will be provided this afternoon until time to transfer to the airport for your jet flight home.

A Farewell Cocktail Party will be held tonight at the hotel.

15th Day **HOME AGAIN.** Morning arrival at the airport where this spectacular vacation comes to a pleasant end.

Outstanding Features

ROUND-TRIP AIR TRANSPORTATION
By giant DC-8 FAN JET
2 Champagne flights • Five Stewardesses
Hot Meals and Snacks

SAN FRANCISCO
Deluxe accommodations at Jack Tar Hotel or Sheraton Palace

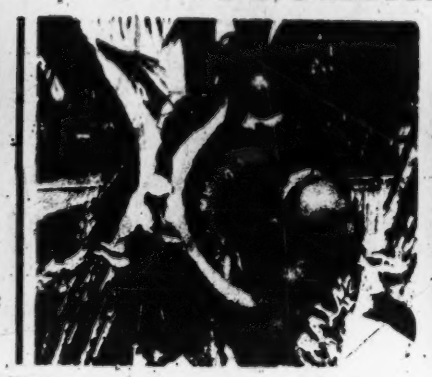
HAWAII
Accommodations at Sheraton Princess Kaiulani Hotel or Ilikai
Flower lei greeting
Get-acquainted briefing party
Free Kodak Hula Show
Free International Market Entertainment

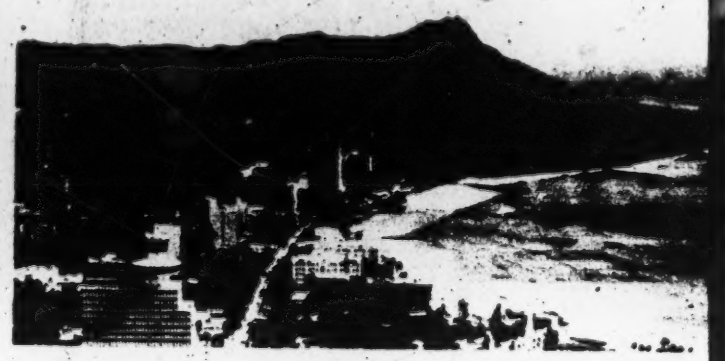
LAS VEGAS
Superior air-conditioned rooms at the Thunderbird Hotel
Cocktail Party

MISCELLANEOUS
Personalized service throughout
Experienced Tour Escort
Private bath accommodations
(single rooms available at small additional charge)
Round trip transfers • Baggage handling
Federal transportation and local taxes are included as shown in rate section
There need be no more worry for you as all arrangements are handled by specialists with only one purpose in mind YOUR SATISFACTION AND PLEASURE

NOT INCLUDED
Meals, except as specifically provided in this itinerary, the other than above, insurance, laundry, wines, liquors and other expenses of a purely personal nature. Personal effects and trip insurance is not included but recommended.

Over 10,000 Satisfied Hawaii Visitors Recommend Skyway-Ensign Tours





CO & LAS VEGAS

DAY ITINERARY

HONOLULU - PEARL HARBOR CRUISE (optional). We highly recommend this cruise inside the huge Naval base of Pearl Harbor. An excellent commentary is provided by the Skipper of the fateful 1941 attack, as you pass "Battleship Row." You will see the new memorial erected above the sunken U.S.S. Arizona. Sail back through Honolulu Harbor and enjoy panoramic views of Leeward Oahu with Diamond Head in the distance. Transfer to your hotel.

HONOLULU. This day in the islands will be at leisure so that you may acquaint yourself with your new surroundings; get your exposure to the warm Hawaiian Sun; spend the day on the golden beach of the blue Pacific, or in your hotel swimming pool.

HONOLULU. Days at leisure for swimming, surfing, outrigger canoeing and shopping.

A spectacular 1 Day Air-Land tour of all the Islands will be offered during these free days.

HONOLULU. At leisure until you transfer to the airport for your flight to Las Vegas where you will be met and transferred to your top 1st class hotel on the strip where accommodations are provided.

LAS VEGAS. The day is at leisure. The outdoor and indoor facilities of your luxurious hotel are yours to enjoy. Here you see society, stars and everyone mix in a continuous round of fun and excitement.

Tonight, you may participate in an optional, traditional midnight gala show including cocktails and superb entertainment.

LAS VEGAS - HOOVER DAM (optional). Today there will be an optional excursion to Hoover Dam. You drive past the fabulous war-born magnesium plant to Boulder City; stop here to see movies showing construction of the dam. Next a panoramic view of Lake Mead then on to the dam site, where ample time is allowed for complete inspection.

LAS VEGAS. The day is at leisure for a stroll down "The Strip" to visit the fabulous, renowned Hotel "Palaces" and Casinos. Hospitality rooms will be provided this afternoon until time to transfer to the airport for your jet flight home.

A Farewell Cocktail Party will be held tonight at the hotel.

HOME AGAIN. Morning arrival at the airport where this spectacular vacation comes to a pleasant end.

Outstanding Features

ROUND-TRIP AIR TRANSPORTATION
By giant DC-8 FAN JET
2 Champagne flights • Five Stewardesses
Hot Meals and Snacks

SAN FRANCISCO
Deluxe accommodations at Jack Tar Hotel
or Sheraton Palace

HAWAII
Accommodations at Sheraton Princess Kaiulani Hotel
or Ilikai
Flower lei greeting
Get-acquainted briefing party
Free Kodak Hula Show
Free International Market Entertainment

LAS VEGAS
Superior air-conditioned rooms at the Thunderbird Hotel
Cocktail Party

MISCELLANEOUS
Personalized service throughout
Experienced Tour Escort
Private bath accommodations
(single rooms available at small additional charge)
Round trip transfers • Baggage handling
Federal transportation and local taxes are
included as shown in rate section
There need be no more worry for you as all arrangements
are handled by specialists with only one purpose in mind:
YOUR SATISFACTION AND PLEASURE

NOT INCLUDED
Meals, except as specifically provided in this itinerary, tips other than above, insurance, laundry, wines, liquors and other expenses of a purely personal nature. Personal effects and trip insurance is not included but recommended.

3 *Exciting* OPTIONALS

OUTER ISLANDS 1 Day

EXCURSION $79.95

ALL ISLANDS AIR-LAND TOUR. One of the most exciting and thrilling trips in the entire Pacific is this one-day air and land tour of all the Hawaiian Islands. For short stays in Hawaii, it offers a grand opportunity of obtaining a general view of the Islands. Such interesting points as Lava Flow areas and Volcanoes in Hawaii, Maui Northern Shores. Molokai's famed cliffs and leper colony, are viewed at a low altitude. Also included are exciting tours on Hawaii and Kauai to Kilauea Crater (Hawaii National Park) and the famed Fern Grotto in Kauai. (Including round-trip airport transfers, luncheon and dinner.)

GRAND CANYON 1Day

AIR-LAND TOUR $48.00

MORNING FLIGHT to the South Rim of Grand Canyon with flightseeing enroute. Morning tour of the West Rim and afternoon tour of the East Rim — Lunch at the Bright Angel Lodge. Return transfer to the airport for late afternoon scheduled flight to Las Vegas. (Including round-trip airport transfers.) Limited to 35 participants.

LOS ANGELES 1 Day

AIR-LAND TOUR $45.00

ONE DAY LOS ANGELES — Morning flight to Los Angeles. Sightseeing of Los Angeles, Beverly Hills, homes of stars and 3 full hours at DISNEYLAND (admission not included). Return Jet Flight to Las Vegas. (Includes round-trip airport transfers.)

17 ESCORTED DEPARTURES

DEPARTURES SATURDAY	FROM
~~June 18~~	~~New York & Pittsburgh~~
~~June 25~~	~~New York~~
July 9	New York & Buffalo
July 16	New York
July 30	New York
Aug. 6	New York & Philadelphia
Aug. 13	New York & Boston
Aug. 20	New York
Aug. 27	New York & St. Louis

DEPARTURES SATURDAY	FROM
~~July 10~~	~~Newark & Columbus~~
*July 3	New York & Detroit
July 10	New York — Washington/Dulles & Chicago
July 17	New York & Cleveland
Aug. 7	Newark
Aug. 14	New York
Aug. 21	Newark
Aug. 28	New York

*2 nights in Los Angeles instead of San Francisco and 1 additional night in Hawaii due to Shriners Convention (Hotel Hollywood Roosevelt)

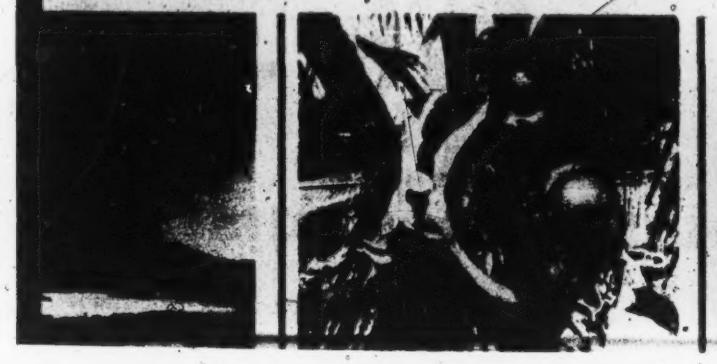
All above Departures Feature the following hotels:

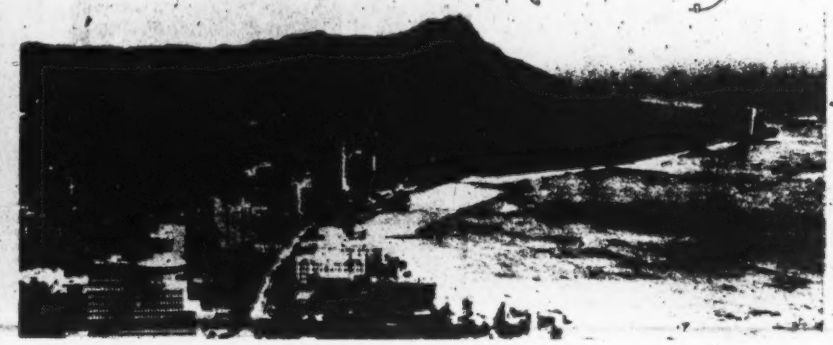
San Francisco:	Jack Tar
Honolulu:	Sheraton Princess Kaiulani
Las Vegas:	Thunderbird

All Above Departures Feature the following hotels:

San Francisco:	Sheraton Palace
Honolulu:	Ilikai
Las Vegas:	Thunderbird

aii Visitors Recommend Skyway-Ensign Tours!





Low Charter Rates

NOW AVAILABLE TO ALL!

Inclusive Tour Charters granted by the Civil Aeronautics Board open to all travelers, tremendous charter savings. YOU SAVE CLOSE TO $150 per person and you get JET FLIGHTS — Top FIRST CLASS HOTELS — COMPLETE TOUR PROGRAM AVAILABLE.

Your Overseas National Airways DC8-F Fan Jet is one of the newest and fastest Douglas Jet Liners. You will fly with the assurance that you are in the hands of one of the more experienced airlines in jet charter travel; a certified supplemental air carrier with many millions of passenger miles, and a perfect safety record; an airline that operates completely under the authority of applicable Federal Agencies.

Top First Class Hotels are featured everywhere:

Las Vegas — Aladdin
Los Angeles — Statler Hilton
San Francisco — Sheraton Palace — (Canterbury on ~~Feb. 18 and April 15~~ Apr 29)
Honolulu — New Reef

You will be thrilled in fascinating San Francisco, warm and hospitable Hawaii, "Movieland" Los Angeles, and exciting Las Vegas.

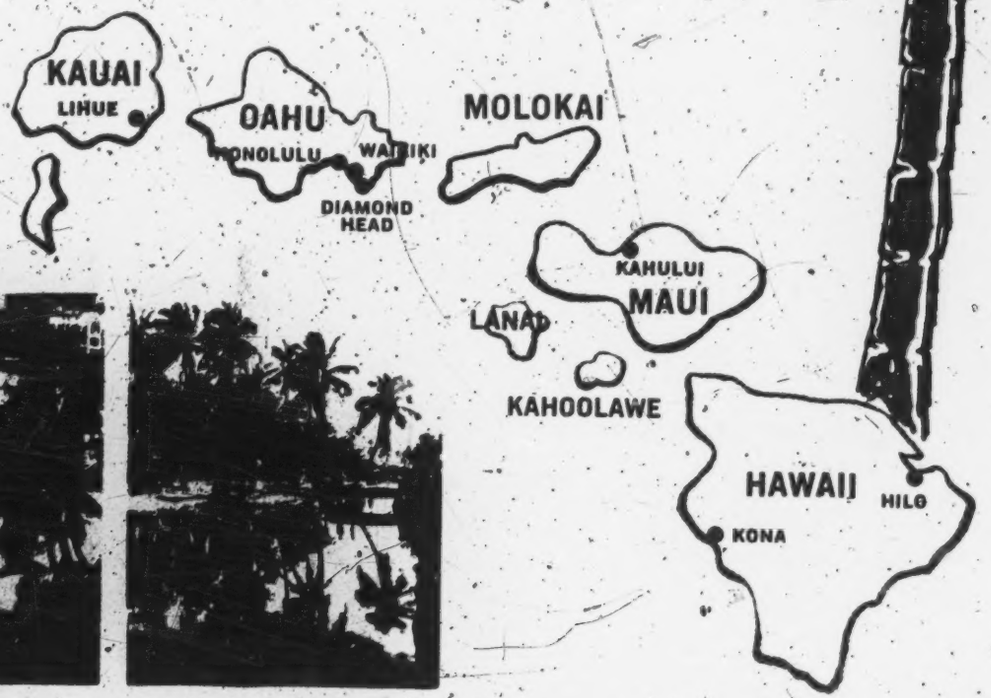
Sightseeing is Available in each city (at additional cost) as outlined in the day by day itinerary. Your Tour Escort will gladly assist you in securing reservations for your choice of sightseeing enjoyment.

RATES

FROM	NEW YORK	CHICAGO
Each of two	$499.00	$475.00
Tax	$ 16.00	$ 14.80

OPTIONAL SUPPLEMENTS

Single room	98.00
1-Day Outer Islands Tour	79.95
Grand Canyon Tour	48.00



TOUR CONDITIONS

WHAT IS INCLUDED: Round trip jet air transportation to Honolulu Overseas National Airways jet charter flight, based on new ITC; h accommodations at hotels shown, based on two people to a t bedded room with private bathroom; meals in flight (champagne se on transcontinental flights only), transfers between hotels and ports, handling of one piece of baggage throughout, all state transportation taxes, experienced Tour Escort.

NOT INCLUDED: Meals, except during flights; insurance, laundry, w liquors; and other expenses of a purely personal nature; all opti sightseeing as shown. Passengers with more than one suitcase wi charged $5.00 per additional bag for handling throughout. Personal e and trip insurance is not included but available at nominal cost.

DEPOSITS AND CANCELLATIONS: A deposit of $100.00 per person accompany each booking in order to secure the reservations. Cancell of reservations must be by written notice to the OPERATOR receive least thirty (30) days before the scheduled departure date, in which e a full refund of all monies paid to the OPERATOR will be made to PARTICIPANT.

Any cancellation received between fifteen (15) and twenty-nine days to departure will be subject to a $25.00 processing fee. Cancellat received within two (2) weeks of the date of departure will be ent to a refund of money paid to the OPERATOR only if a substitute PA CIPANT is found. In the event that a substitute PARTICIPANT is fo the refund shall be made less a Fifty ($50) Dollars processing fee. H ever, in the event that the PARTICIPANT will actually depart on anc tour conducted by the OPERATOR within six (6) months from the da notice of such cancellation, full credit for such Fifty ($50) Dollars wi given on account of the total purchase price of such later tour.

No refund shall be made by the OPERATOR for any service or accom dation in connection with the attached itinerary not utilized by the P TICIPANT. In the event that a cancellation of the tour shall be compe by circumstances beyond the control of the carrier or OPERATOR, refund of all deposits made and monies paid hereunder shall be m to the PARTICIPANT by the OPERATOR.

BAGGAGE: The tour operator, or his agents, shall not be responsibl any way for loss or damage to passenger's baggage. Free weight al ance is 44 lbs. Any excess baggage is at passenger's own expense. liability of the Airline for loss or damage to PARTICIPANT's bag shall be limited in accordance with the terms of the Carrier's Liab Insurance coverage maintained in accordance with minimum requ ments of Civil Aeronautics Board.

THESE TOURS WERE PLANNED IN ACCORDANCE, AND WILL OPERATED, IN FULL COMPLIANCE WITH THE NEW INCLUSIVE T CHARTER. REGULATIONS APPROVED BY THE CIVIL AERONAUT BOARD IN WASHINGTON. TOUR RATES INCLUDE CHARGES FOR PL NING AND OPERATION AND ARE SUBJECT TO CHANGE WITH NOTICE.

ELIGIBILITY: Anybody is eligible to participate in any of these tour

THE TOUR OPERATOR reserves the right to modify the itinerary as be required by circumstances in the interest of the passengers.

TOUR CONTRACT: In accordance with Civil Aeronautics Board rul tour contract approved as to form and content by Civil Aeronautics B must be signed for participation in this tour. Ask your Travel Agent.

RESPONSIBILITY

All arrangements for accommodations, transfers and sightseeing use connection with this tour have been made by Male Travel Bureau, Inc., w company shall hereafter be referred to as the "operator." The PARTICIP waives any claim against the OPERATOR for any injury, damage, loss, dent or for any other cause to person or property due to any act or negli of any hotel, or other person rendering any of the services included in ground portion of the itinerary. The OPERATOR, however, shall be respons to the PARTICIPANT for supplying the services and accommodations off to the PARTICIPANTS as stated in the tour brochure.

SEE YOUR TRAVEL AGENT

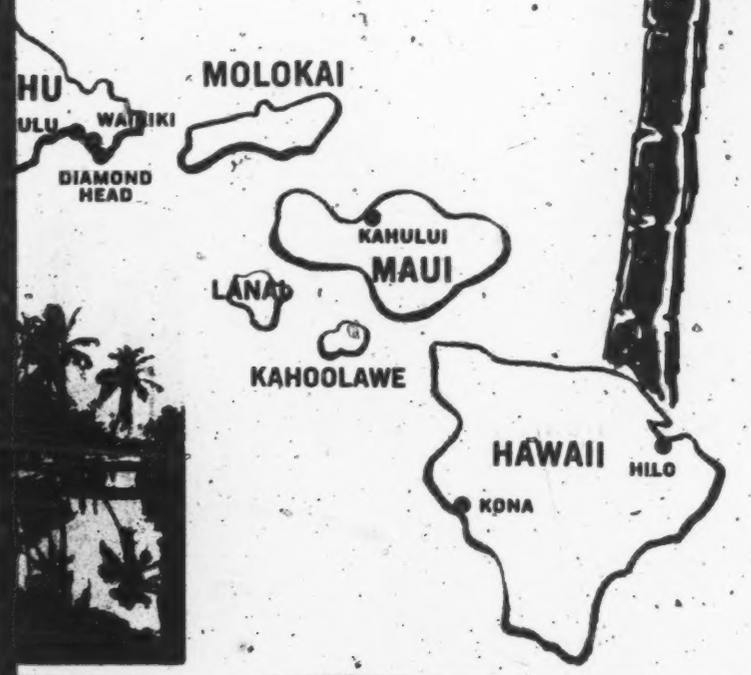
Printed in U.S.A.

ates

First Class Hotels are
ured everywhere:
Vegas – Aladdin
Angeles – Statler Hilton
Francisco – Sheraton Palace – (Canterbury on ~~18 and April 15)~~ Apr 29)
olulu – New Reef

will be thrilled in fascinating San Francisco, n and hospitable Hawaii, "Movieland" Los An-s, and exciting Las Vegas.

htseeing is Available in each city (at tional cost) as outlined in the day by day itiner-Your Tour Escort will gladly assist you in secur-reservations for your choice of sightseeing en-ent.



TOUR CONDITIONS

WHAT IS INCLUDED: Round trip jet air transportation to Honolulu via Overseas National Airways jet charter flight, based on new ITC; hotel accommodations at hotels shown, based on two people to a twin-bedded room with private bathroom; meals in flight (champagne served on transcontinental flights only), transfers between hotels and airports, handling of one piece of baggage throughout, all state and transportation taxes, experienced Tour Escort.

NOT INCLUDED: Meals, except during flights; insurance, laundry, wines, liquors; and other expenses of a purely personal nature; all optional sightseeing as shown. Passengers with more than one suitcase will be charged $5.00 per additional bag for handling throughout. Personal effect and trip insurance is not included but available at nominal cost.

DEPOSITS AND CANCELLATIONS: A deposit of $100.00 per person must accompany each booking in order to secure the reservations. Cancellation of reservations must be by written notice to the OPERATOR received at least thirty (30) days before the scheduled departure date, in which event a full refund of all monies paid to the OPERATOR will be made to the PARTICIPANT.

Any cancellation received between fifteen (15) and twenty-nine days prior to departure will be subject to a $25.00 processing fee. Cancellations received within two (2) weeks of the date of departure will be entitled to a refund of money paid to the OPERATOR only if a substitute PARTICIPANT is found. In the event that a substitute PARTICIPANT is found, the refund shall be made less a Fifty ($50) Dollars processing fee. However, in the event that the PARTICIPANT will actually depart on another tour conducted by the OPERATOR within six (6) months from the date of notice of such cancellation, full credit for such Fifty ($50) Dollars will be given on account of the total purchase price of such later tour.

No refund shall be made by the OPERATOR for any service or accommodation in connection with the attached itinerary not utilized by the PARTICIPANT. In the event that a cancellation of the tour shall be compelled by circumstances beyond the control of the carrier or OPERATOR, full refund of all deposits made and monies paid hereunder shall be made to the PARTICIPANT by the OPERATOR.

BAGGAGE: The tour operator, or his agents, shall not be responsible in any way for loss or damage to passenger's baggage. Free weight allowance is 44 lbs. Any excess baggage is at passenger's own expense. The liability of the Airline for loss or damage to PARTICIPANT's baggage shall be limited in accordance with the terms of the Carrier's Liability Insurance coverage maintained in accordance with minimum requirements of Civil Aeronautics Board.

THESE TOURS WERE PLANNED IN ACCORDANCE, AND WILL BE OPERATED, IN FULL COMPLIANCE WITH THE NEW INCLUSIVE TOUR CHARTER REGULATIONS APPROVED BY THE CIVIL AERONAUTICS BOARD IN WASHINGTON. TOUR RATES INCLUDE CHARGES FOR PLANNING AND OPERATION AND ARE SUBJECT TO CHANGE WITHOUT NOTICE.

ELIGIBILITY: Anybody is eligible to participate in any of these tours.

THE TOUR OPERATOR reserves the right to modify the itinerary as may be required by circumstances in the interest of the passengers.

TOUR CONTRACT: In accordance with Civil Aeronautics Board rules a tour contract approved as to form and content by Civil Aeronautics Board must be signed for participation in this tour. Ask your Travel Agent.

RESPONSIBILITY

All arrangements for accommodations, transfers and sightseeing used in connection with this tour have been made by Male Travel Bureau, Inc., which company shall hereafter be referred to as the "operator." The PARTICIPANT waives any claim against the OPERATOR for any injury, damage, loss, accident or for any other cause to person or property due to any act or negligence of any hotel, or other person rendering any of the services included in the ground portion of the itinerary. The OPERATOR, however, shall be responsible to the PARTICIPANT for supplying the services and accommodations offered to the PARTICIPANTS as stated in the tour brochure.

SEE YOUR TRAVEL AGENT

Printed in U.S.A.

Skyway-Ensign 1967

NEW! JET CHARTER to LAS VEGAS LOS ANGELES SAN FRANCISCO AND HAWAII

NOW ONLY
$499.00* From NEW YORK
(*Plus $16.00 Tax)
$475.00* From CHICAGO
(*Plus $14.80 Tax)

JET
DC-8F

ALOHA FESTIVAL FLIGHTS

16 DAYS INCLUSIVE

MANY CONVENIENT DEPARTURES

HAWAII LAS VEGAS ★ LOS ANGELES & SAN FRANCISCO

ITC-67

16 DAY TOUR—DAY BY DAY ITINERARY

Sat. 1st Day **FLY TO LAS VEGAS.** Your DC-8 Jet aircraft will provide an enjoyable flight to Las Vegas. Upon arrival your transfer will be provided to the ALADDIN HOTEL where accommodations have been reserved.
A briefing meeting will be held to introduce you to your fellow travelers, explain the tour program and give you all necessary information on tours, entertainment, restaurants, shops, etc.

Sun. 2nd Day Mon. 3rd Day **LAS VEGAS.** These days are at leisure. On Sunday evening be our guest at a festive cocktail party. The outdoor and indoor facilities of your luxurious hotel are yours to enjoy. Here you see society, stars and everyone mix in a continuous round of fun and excitement.
SIGHTSEEING AVIALABLE: Hoover Dam (cost $4.40). You drive past the fabulous war-born magnesium plant to Boulder City; stop here to see movies showing construction of the dam. Next a panoramic view of Lake Mead then on to the dam site, where ample time is allowed for complete inspection.

Tues. 4th Day **LAS VEGAS - LOS ANGELES.** Depart via charter motorcoach for Los Angeles, where accommodations are reserved at the STATLER HILTON HOTEL.

Wed. 5th Day **LOS ANGELES.** Day at leisure.
SIGHTSEEING AVAILABLE: Disneyland and Knott's Berry Farm (cost $8.05). A full day excursion to Disneyland and Knott's Berry Farm. You will have four full hours in the Magic Kingdom of Disneyland. Admission to Movieland Wax Museum included. At Knott's Berry Farm you will see a true gold rush town of early California, amazing replica of a frontier town. You will visit the Horse Arena where the finest of Arabian horses are displayed. You return to your hotel via the Santa Ana Freeway.
BEVERLY HILLS AND BEACH (cost $3.70). Drive through Hollywood, the Sunset Strip, see homes of movie stars in Beverly Hills, and the Palisades at Santa Monica.

Thu. 6th Day **LOS ANGELES - SAN FRANCISCO.** Transfer provided to the airport for your flight to San Francisco. Transfer included to the SHERATON PALACE HOTEL (Canterbury Hotel on Feb. 18th and April 15th tours) where accommodations are reserved for you.
SIGHTSEEING AVAILABLE: Deluxe City Tour (cost $7.00). This afternoon you may take a complete and comprehensive tour of San Francisco, including the Civic Center, Mission Dolores, Twin Peaks, St. Francis residential section, Steinhart's Aquarium, Golden Gate Park, Ocean Beach, Seal Rocks and the Cliff House, Palace of the Legion of Honor, Lincoln Park, Seacliff Presidio, Palace of Fine Arts, Marina, Yacht Harbor and Fort Mason.
SAN FRANCISCO - Muir Woods — Winery Tour (cost $12.50). An optional program will be offered today to a California Winery, the majestic Redwoods of Muir Woods National Park and the picturesque town of Sausalito. Highlight of this trip is a conducted tour through one of the largest wineries in the world ending with the traditional wine tasting ritual.
Your evening is at leisure to stop in Chinatown, ride the cable cars, dine at Fisherman's Wharf, or enjoy the magnificent view from the top of the Fairmont or Mark Hopkins hotels.

Fri. 7th Day **SAN FRANCISCO.** Day at leisure to enjoy your choice of sightseeing.

Sat. 8th Day **SAN FRANCISCO - HONOLULU.** Your DC-8 Jet will provide an enjoyable flight to Hawaii. Upon arrival at Honolulu airport, you will receive the traditional flower lei welcome. You will be transferred by chartered motorcoach to your top 1st Class hotel in Waikiki where accommodations have been reserved for you.

Sun. 9th Day to Fri. 14th Day **HONOLULU.** During your stay the following sightseeing tours are available:
DIAMOND HEAD - SEA LIFE PARK (cost $8.80). An exciting tour around Diamond Head to Koko Head, the spectacular Blow Hole, Sea Life Park (admission included) and famous Nuuanu Pali where King Kamehameha completed his conquest of the Islands. Return to Waikiki through Honolulu.
PEARL HARBOR CRUISE (cost $8.50). We highly recommend this cruise inside the huge Naval base of Pearl Harbor. An excellent commentary is provided by the Skipper of the fateful 1941 attack, as you pass "Battleship Row." You will see the new memorial erected above the sunken U.S.S. Arizona. Sail back through Honolulu Harbor and enjoy panoramic views of Leeward Oahu with Diamond Head in the distance. Transfers included.
KODAK HULA SHOW. Tuesday and Thursday you can attend the Kodak Hula Show at Kapiolani Park. This show sponsored by Eastman Kodak offers an excellent opportunity to take still and motion pictures of Hawaiian and Tahitian Hula dances, in a delightful setting by the beach at Waikiki.
A spectacular 1 Day Air-Land tour of all the Islands will be offered during these free days.

Sat. 15th Day **DEPART HONOLULU.** At leisure until you transfer to Honolulu Airport for your DC-8 Jet overnight flight for home.

Sun. 16th Day **ARRIVE HOME.** This afternoon you will arrive at the airport and complete your exciting Hawaiian vacation trip. You will have fond memories of all of the interesting and colorful places you have visited.

Outstanding Features

AIR TRANSPORTATION
By giant DC-8 FAN JET
2 Champagne flights • Five Stewardesses
Hot Meals and Snacks

LAS VEGAS
Superior rooms at the Aladdin Hotel
Get-acquainted briefing party
Cocktail Party

LOS ANGELES
Accommodations at the Statler Hilton Hotel

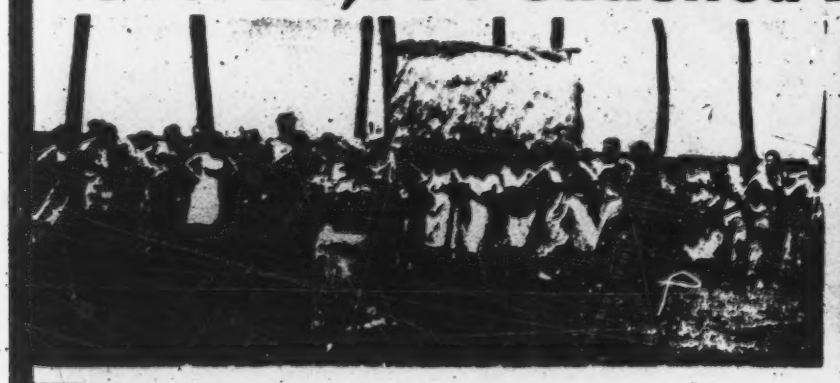
SAN FRANCISCO
Deluxe accommodations at Sheraton Palace or Canterbury

HAWAII
Accommodations at New Reef Hotel
Flower lei greeting
Free Kodak Hula Show
Free International Market Place Entertainment

MISCELLANEOUS
Personalized service throughout
Experienced Tour Escort
Private bath accommodations
(single rooms available at additional charge)
Round trip transfers • Baggage handling
Federal transportation and local taxes are included as shown in rate section
There need be no more worry for you as all arrangements are handled by specialists with only one purpose in mind: YOUR SATISFACTION AND PLEASURE

NOT INCLUDED
Meals, except as specifically provided in this itinerary, tip other than above, insurance, laundry, wines, liquors and oth expenses of a purely personal nature. Personal effects ar trip insurance is not included but recommended.

Over 10,000 Satisfied Hawaii Visitors Recommend Skyway-Ensign Tours



EGAS ★ LOS ANGELES
SAN FRANCISCO

Y DAY ITINERARY

$12.50.) An optional program will be offered today to a California Winery, the majestic Redwoods of Muir Woods National Park and the picturesque town of Sausalito. Highlight of this trip is a conducted tour through one of the largest wineries in the world ending with the traditional wine tasting ritual.
Your evening is at leisure to stop in Chinatown, ride the cable cars, dine at Fisherman's Wharf, or enjoy the magnificent view from the top of the Fairmont or Mark Hopkins hotels.

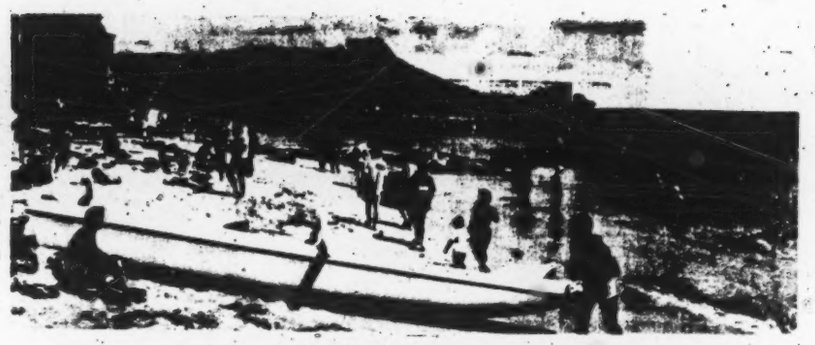
ri. 7th Day **SAN FRANCISCO.** Day at leisure to enjoy your choice of sightseeing.

at. 8th Day **SAN FRANCISCO - HONOLULU.** Your DC-8 Jet will provide an enjoyable flight to Hawaii. Upon arrival at Honolulu airport, you will receive the traditional flower lei welcome. You will be transferred by chartered motorcoach to your top 1st Class hotel in Waikiki where accommodations have been reserved for you.

un. 9th Day to ri. 14th Day **HONOLULU.** During your stay the following sightseeing tours are available:
DIAMOND HEAD - SEA LIFE PARK (cost $8.80). An exciting tour around Diamond Head to Koko Head, the spectacular Blow Hole, Sea Life Park (admission included) and famous Nuuanu Pali where King Kamehameha completed his conquest of the Islands. Return to Waikiki through Honolulu.
PEARL HARBOR CRUISE (cost $8.50). We highly recommend this cruise inside the huge Naval base of Pearl Harbor. An excellent commentary is provided by the Skipper of the fateful 1941 attack, as you pass "Battleship Row." You will see the new memorial erected above the sunken U.S.S. Arizona. Sail back through Honolulu Harbor and enjoy panoramic views of Leeward Oahu with Diamond Head in the distance. Transfers included.
KODAK HULA SHOW. Tuesday and Thursday you can attend the Kodak Hula Show at Kapiolani Park. This show sponsored by Eastman Kodak offers an excellent opportunity to take still and motion pictures of Hawaiian and Tahitian Hula dances, in a delightful setting by the beach at Waikiki.
A spectacular 1 Day Air-Land tour of all the Islands will be offered during these free days.

at. 15th Day **DEPART HONOLULU.** At leisure until you transfer to Honolulu Airport for your DC-8 Jet overnight flight for home.

un. 16th Day **ARRIVE HOME.** This afternoon you will arrive at the airport and complete your exciting Hawaiian vacation trip. You will have fond memories of all of the interesting and colorful places you have visited.



Outstanding Features

AIR TRANSPORTATION
By giant DC-8 FAN JET
2 Champagne flights • Five Stewardesses
Hot Meals and Snacks

LAS VEGAS
Superior rooms at the Aladdin Hotel
Get-acquainted briefing party
Cocktail Party

LOS ANGELES
Accommodations at the Statler Hilton Hotel

SAN FRANCISCO
Deluxe accommodations at Sheraton Palace
or Canterbury

HAWAII
Accommodations at New Reef Hotel
Flower lei greeting
Free Kodak Hula Show
Free International Market Place Entertainment

MISCELLANEOUS
Personalized service throughout
Experienced Tour Escort
Private bath accommodations
(single rooms available at additional charge)
Round trip transfers • Baggage handling
Federal transportation and local taxes are
included as shown in rate section
There need be no more worry for you as all arrangements
are handled by specialists with only one purpose in mind:
YOUR SATISFACTION AND PLEASURE

NOT INCLUDED
Meals, except as specifically provided in this itinerary, tips other than above, insurance, laundry, wines, liquors and other expenses of a purely personal nature. Personal effects and trip insurance is not included but recommended.

2 *Exciting* OPTIONALS

OUTER ISLANDS 1 Day
EXCURSION $79.95

ALL ISLANDS AIR-LAND TOUR. One of the most exciting and thrilling trips in the entire Pacific is this one-day air and land tour of all the Hawaiian Islands. For short stays in Hawaii, it offers a grand opportunity of obtaining a general view of the Islands. Such interesting points as Lava Flow areas and Volcanoes in Hawaii, Maui Northern Shores. Molokai's famed cliffs and leper colony, are viewed at a low altitude. Also included are exciting tours on Hawaii and Kauai to Kilauea Crater (Hawaii National Park) and the famed Fern Grotto in Kauai. (Including round-trip airport transfers, luncheon and dinner.)

GRAND CANYON 1Day
AIR-LAND TOUR $48.00

MORNING FLIGHT to the South Rim of Grand Canyon with flight-

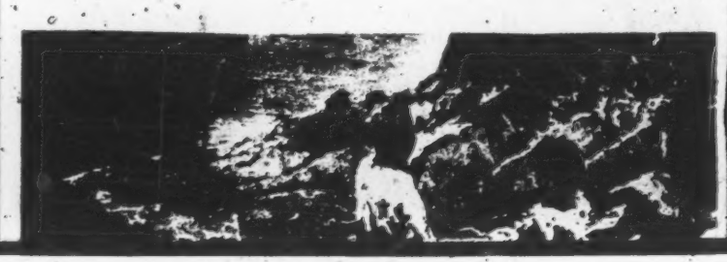
ESCORTED DEPARTURE

Apr. 29 N.Y./CHICAGO

The above departure features the following hotels:

LAS VEGAS - Aladdin
LOS ANGELES - Statler Hilton
SAN FRANCISCO - Canterbury
HONOLULU - New Reef

waii Visitors Recommend Skyway-Ensign Tours!



LIBRARY
SUPREME COURT, U. S.

No. 969
(Consolidated with Nos. 800 and 946)

Office Supreme Court, U.S.
FILED
APR 25 196
JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
Petitioner,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., and AMERICAN AIRLINES, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

REPLY BRIEF FOR PETITIONER, THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

CHARLES A. HOBBS,
Counsel for Petitioner,
The American Society of Travel Agents
1616 H Street, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
GLEN A. WILKINSON
PAUL S. QUINN
Of Counsel

WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON, D. C. 20001

TABLE OF CONTENTS

	Page
1. The Scheduled Carriers Have Not Dealt With The Basic Issue, Which Is, Are Inclusive Tour Charters Individually Ticketed Transportation	1
2. The Scheduled Carriers Have Misread the Legislative History and the Background to the 1962 Act	5
3. The Interstate Commerce Commission Practice Allowing ITCs by Charter Motor Bus Carriers is Comparable to the Board's Rules Allowing ITCs by Supplemental Carriers	7
4. Respondents' Procedural Contentions Are Without Substance and Should Be Disposed of Here Without a Remand	11
CONCLUSION	13

TABLE OF CITATIONS

Cases

Air Freight Forwarder Case, 9 C.A.B. 473 (1948)	6
American Airlines v. *CAB*, 178 F.2d 903 (7th Cir. 1949)	6
American Airlines v. *CAB*, 98 U.S.App.D.C. 348, 235 F.2d 845 (1956), *cert. den.* 353 U.S. 905	5
American Airlines v. *CAB*, 365 F.2d 939 (D.C. Cir. 1966)	6
Greyhound Corp. v. *Edwards*, 96 M.C.C. 112 (1964)	8, 10
Greyhound Corp. v. *Edwards*, 100 M.C.C. 453, (1966)	11
Matter of People (Russian Reinsurance Co.) 255 N.Y. 415, 175 N.E. 114 (1931)	13
Tauck Tours Inc., Extension—New York, N.Y., 49 M.C.C. 491, 52 M.C.C. 373, 54 M.C.C. 291, 63 M.C.C. 493, action to set aside dismissed, sub nom. *National Bus Traffic Assn.* v. *United States*, 143 F.Supp. 689 (D.N.J. 1956), aff'd 352 U.S. 1020	8, 9
United Airlines v. *CAB*, 108 U.S.App.D.C. 1, 278 F.2d 446 (1960)	5

Others

	Page
14 C.F.R. Part 296	6
14 C.F.R. § 378.2(d)	4
49 U.S.C. § 303(a)(18)	8
49 U.S.C. § 1301(33)	2
49 U.S.C. § 1371	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 969

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
Petitioner,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., and AMERICAN AIRLINES, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

REPLY BRIEF OF AMERICAN SOCIETY OF TRAVEL AGENTS

---

1. The Scheduled Carriers Have Not Dealt With The Basic Issue, Which Is, Are Inclusive Tour Charters Individually Ticketed Transportation

The scheduled carriers avoid the basic question at issue by assuming its answer. Throughout their "Statement of the Case" (pp. 3, 6, 30, 33, 41), and argument, they profess to assume that inclusive tour charters (ITCs) are individually ticketed transportation, and devote their energy to proving the other premise, which we freely concede, that Congress intended to prohibit the supplementals from engaging in individually ticketed transportation.

The case is not so simple. While it is true that Congress intended to prohibit the supplementals from providing "individually ticketed" transportation, the threshhold question remains, what does that mean? In the context of this case, at least, it is clear that "individually ticketed" traffic is a term intended to describe the scheduled, point-to-point traffic that the route carriers customarily transport. This is confirmed by the very language of the 1962 Act, which confines the supplemental carriers to charter transportation which supplements *"the scheduled service* . . . ." 49 U.S.C. § 1301(33).

Inclusive tour charters are inherently distinct from individually ticketed, or scheduled service, because with ITCs there is no offering, attraction, or providing of plain point-to-point transportation, which after all is the *raison d'etre* of the scheduled carriers, and all that they are entitled to competitive protection for.

The scheduled carriers suggest (p. 51-52, 56) that the fact that ITC passengers are solicited from the general public makes ITCs illegal. But it is of no significance per se that the market being solicited by the tour operator is the "general public." The real question is whether the solicitation attracts and diverts that part of the general public which would otherwise travel on the scheduled services. If so, then the charter on which the diverted passengers travel does not "supplement the scheduled service," and might indeed be contrary to the intent of the cases, discussed at pp. 8-12 below.

As we pointed out in our main brief (pp. 26-31) the Board has found, with ample support, that diversion from the scheduled carriers would not be significant. The British, who have had over 16 years' experience with ITCs, have said there has been no material diversion. The Interstate Commerce Commission has not found diversion significant with respect to ITCs by motor bus.

The Court may be interested in some statistics on ITC operations to date, which seem to confirm the British and

U.S. motor carrier findings of little diversion. In the domestic area, by far the most popular ITCs to date have been to Hawaii. In 1967, 51,340 passengers travelled to Hawaii on ITCs.[1] This year, 1968, if only one-half of the ITCs so far authorized are in fact operated (assuming full planeloads), some 140,000 tourists will visit Hawaii on ITCs.[2] Notwithstanding this growth the scheduled services of the scheduled domestic carriers have likewise made striking strides forward. Thus, from the strike year 1966, during which such carriers moved 1,090,000 passengers to Hawaii, the figure increased to 1,722,000 in 1967, and will increase to an estimated 2,066,400 passengers in 1968. In spite of the growing inclusive tour program, no impact on the regular services of the trunk carriers is evident and their financial prospects are excellent.[3] We suggest that the heavy promotion of ITCs to Hawaii has actually had some direct effect in increasing the scheduled carriers' traffic to Hawaii, by implanting the desire to go to Hawaii in persons who are unwilling or unable to do so via ITCs.

At p. 64 (also pp. 45 and 52), the scheduled carriers argue that allowing supplementals to operate ITCs through "travel agents (or 'tour operators')" would be to "permit them to do indirectly and through a subterfuge what they clearly could not do directly."[4] This argu-

[1] The data in this paragraph were furnished by CAB sources: *CAB Competition Study*, 1966; CAB Form 41 Reports for 1967 for Domestic Trunk Delta; inclusive tour data from inclusive tour applications, and reports and estimates by the Board's Bureau of Operating Rights.

[2] Experience here and in Britain is that many more ITCs are authorized than are actually operated. Non-operation occurs when the tour operator finds that the tour cannot be marketed anywhere near break-even.

[3] See our main brief, pp. 29-30, where the British ATLB noted that British European Airways' (a scheduled carrier) traffic continued to grow at much the same rate as before ITCs became popular.

[4] At p. 63 (and p. 45) the scheduled carriers say that the Board and the supplemental carriers concede that the supplementals cannot

ment, incidentally, was made and rejected in the bus ITC cases, discussed at pp. 7-11 below.

In the first place, the tour operator is no subterfuge or front for the supplemental carrier. He is an independent merchant producing something of value to the public—by using his volume discount power, at his own personal risk, he contracts for the various tour elements, and offers the tour for less than the tourist would pay if he purchased the elements separately. The carrier does not share the risk; it must receive its full tariff price for the charter no matter how many tourists are carried. Since the carrier does not share in the profit or loss of the tour venture, it is doing nothing "indirectly" that it is prohibited from doing directly.

In the second place, even if the tour operator were a front for the carrier, this would not really affect the inherent validity of ITCs, because the significant inquiry is who is *being* solicited to join the charter group, not who is *doing* the soliciting. If the tour participants produced by the solicitation consist of point-to-point travelers diverted from the regular scheduled traffic of the route carriers, then the charter is bad, irrespective of whether the tour operator, the supplemental or someone else solicited the business. On the other hand, if the solicitation produces a bona fide group of tour participants who would not have used the scheduled services of the route carriers, then the charter is in the public interest and achieves what the Board intended.

There is a significant omission in the scheduled carriers' brief. There is no attempt to refute the Board's find-

---

themselves sell inclusive tours. This is not so. The sole support for this claim is a vague, passing reference in the Board's opinion in the Supplemental Air Service Proceeding, App. 345a. In fact, the question of whether the supplementals could provide charter service by inclusive tours for groups assembled by the supplementals has never been squarely raised before or decided by the Board. It is not relevant to the determination of this case since the Board has provided by regulation that the Supplementals may not serve as tour operators. 14 C.F.R. § 378.2(d), App. 418a.

ings that ITCs would have no significant impact on the scheduled carriers. As critical as the diversion issue is in this case, illuminating as it does the legislators' speeches and the proper policies to be followed by the Board, one can only note surprise at the strange silence on the point.

2. The Scheduled Carriers Have Misread the Legislative History and the Background to the 1962 Act

At p. 9, n. 12, and again at p. 12, n. 15, the scheduled carriers deny that the Board had power to allow ITCs prior to the 1962 Act. As we briefly mentioned in our main brief, p. 23, n. 95, there was never any question prior to 1962 about the supplementals conducting *charter* operations; the doubt was focussed on the individually ticketed, scheduled operations. In other words, the Board had statutory authority to allow the supplementals to carry charters, including ITCs or any other bona fide charter, certainly under a certificate,[5] and probably under an exemption as well. The doubt that the 1956 *American Airlines* case [6] cast on the exemption procedure arose not from the charter aspect, but from the fact that the supplemental carriers were authorized to perform some scheduled individually ticketed service, and this made their operations "much closer to the certificated services." [7] The District of Columbia Court was entirely correct when it noted that "the Board had preexisting authority to determine the definition of charter . . . ." (i.e., to allow ITCs), and that "Congress did not intend to withdraw this authority." 365 F.2d at 944.

---

[5] 49 U.S.C. § 1371. The certificate must name the terminal and intermediate points of service, § 1371(e)(1), *United Airlines* v. *CAB*, 108 U.S.App.D.C. 1, 278 F.2d 446 (1960), but *charter* service can be provided without regard to the points named, § 1371(e)(6) (amended in 1962 not to apply to supplementals).

[6] *American Airlines* v. *CAB*, 98 U.S.App.D.C. 348, 235 F.2d 845 (1956), *cert. den.* 353 U.S. 905.

[7] 235 F.2d at 853.

The primary reason the Board sought legislation was to enable it to authorize the supplementals to perform individually ticketed operations, authority the courts had held it lacked, but of course Congress refused to grant that authority.

This fact is what the House Report referred to when it said the bill gave the Board "some, but not all, of the authority requested by" the Board (Resp. Br. 13, 22), and it is what Chairman Boyd referred to when he said the Board's bill was designed "to correct the deficiencies in the Board's legal authority which were found to exist by the court." (Resp. Br. 14.)

At p. 9, the scheduled carriers quote ASTA as saying the inclusive tour charter "was not then known in the air travel industry in this country." Our statement is perhaps more significant for what it did not say than for what it said. The fact is, the inclusive tour charter concept *was* known—well known and successful—just about everywhere else *except* the air travel industry in this country: It was well known in *surface* transportation industry in this country.[8] It was well known in the air *freight* industry in this country.[9] And it was well known in the air travel industry *outside* of this country.[10] The

---

[8] As fully outlined below, pp. 7-11 with respect to bus charters. There are no restrictions on a tour operator chartering railroad cars or steamships. The ITC question has not arisen in these fields, because the competitive structure is not the same as it is in the bus and aircraft field; i.e., there is no nonsked v. route carrier interplay in the rail and water fields.

[9] Airfreight charters have not been discussed in the briefs filed to date, yet they are very similar to ITCs. The airfreight forwarder is authorized to assemble planeloads of freight and move them by chartered aircraft. The regulations are 14 C.F.R. Part 296, and for litigation approving this type of charter, see *Air Freight Forwarder Case*, 9 C.A.B. 473 (1948), and *American Airlines* v. *CAB*, 178 F.2d 903 (7th Cir. 1949). It seems a bit strange to see a type of passenger charter vigorously attacked, when the same sort of charter is well accepted in the freight field.

[10] As discussed in our main brief, pp. 28-30.

sole remaining holdout was the air travel industry in this country.

At p. 16, and again at 43-44, and again at 52, the scheduled carriers make an impermissible error in characterizing the testimony of Mr. Burwell (who represented the supplementals before Congress). They say that "He testified that all-expense tours were not charter trips . . . ." This is completely false. As his testimony set forth in respondents' brief, p. 17, shows, he said they were not charters "*under the present Board rules.*" That was the whole purpose of the Senate proviso—legislatively to *overrule* the Board's rule against ITCs, so as to *require* the Board to allow them. There was never any suggestion from Mr. Burwell that ITCs were not a proper form of charter under common law principles, which look only to the arrangement between the charterer and the charteree, without regard to what *use* the charter was to be put to. That is, ITCs are being challenged here as an improper form of charter, not because of the arrangement between the charterer and the charteree, which is a classic charter by any common law test, but solely because of the use to which the charter is to be put, a use which raises questions of national economic policy, not common law definitions of charter.

3. The Interstate Commerce Commission Practice Allowing ITCs by Charter Motor Bus Carriers Is Comparable to the Board's Rules Allowing ITCs by Supplemental Carriers

At pp. 68-71 the scheduled carriers attempt to explain away the simple fact that ITCs are allowed in the motor bus industry.

Under the Interstate Commerce Commission practice a travel agent or tour operator may be licensed as a "broker" of bus transportation. As such he may solicit passengers and arrange with a bus carrier for their trans-

portation.[13] However, the type of traffic solicited determines which type of bus service he may use for the transportation. There are three types of bus service—regular-route, special operations, and charter.[14] If the group solicited wishes only point-to-point transportation, the broker must use a route carrier. On the other hand, if the group has a joint purpose other than mere transportation, he may use a charter carrier.[15] As the ICC regulations put it, the charter bus operator is prohibited from transporting—[16]

> ". . . passengers to whom individual tickets have been sold or with whom separate and individual transportation arrangements have been made."

The concern of the ICC is obviously parallel to that of the Board: to prevent charter carriers from depriving scheduled route carriers of individually ticketed point-to-point traffic—business which is reserved for the scheduled route carriers.

The ICC several times has considered the question whether sightseeing or other special purpose groups are eligible for carriage by chartered bus. In *Tauck Tours*,[17] a tour operator proposed to charter buses from charter bus carriers, and use them to transport groups of sightseeing tourists, which he had solicited and brought together, from New York, Newark and Philadelphia to vari-

---

[13] 49 U.S.C. § 303(a)(18), and see § 311.

[14] This is fully explained at *Greyhound Corp.* v. *Edwards*, 96 M.C.C. 112, 118 (1964). Respondents (p. 69) do not appear to realize that bus charter authority may be held by specific ICC grant, as well as as an incident to route authority. See the *National Bus Traffic Assn.* case, note 17 below, 143 F.Supp. at 692 and 693.

[15] See the *Edwards* case, 96 M.C.C. at 118-119.

[16] Id. at 118.

[17] *Tauck Tours Inc., Extension—New York, N.Y.*, 49 M.C.C. 491, 52 M.C.C. 373, 54 M.C.C. 291, 63 M.C.C. 493, action to set aside dismissed, sub nom. *National Bus Traffic Assn.* v. *United States*, 143 F.Supp. 689 (D.N.J. 1956), aff'd 352 U.S. 1020.

ous points in the United States and Canada. The tourists paid a lump sum in advance for the various elements of the tour. The Examiner denied permission to do this, on the ground that Tauck was not a broker, but a common carrier.[18] A division of the Commission reversed and approved the proposal, but on condition that Tauck use regular route carriers, not charter carriers.[19] The division then reconsidered, and held that charter carriers could be used after all, and the full Commission affirmed.[20] The Commission reasoned that Tauck's patrons, traveling and sightseeing together, had a "community of interest" the equivalent of that of a pre-formed group, which clearly could charter.[21]

The route carriers took the case to a 3-judge federal court, claiming that Tauck's proposal permitted the charter carriers to carry individually ticketed traffic.[22] The court affirmed with a careful opinion, saying: [23]

> "Though the individual membership certificates do entitle each individual Tauck patron to transportation and in this sense are 'tickets,' a good deal more than bare individual transportation is involved. The tour is attractive because it is a group adventure. Few people travel to look alone upon Niagara Falls or the Grand Canyon of the Colorado. Whether the group be formed by Tauck before or after the charter of

---

[18] See 143 F.Supp. at 691.

[19] Id.

[20] Id. 691-692.

[21] Id. at 695. Note: the technical form of the bus charter was a charter between the tourists as a group and the carrier, whereas the ITCs in this case are between the tour operator and the carrier. This difference is merely technical, as in both cases the essential element is that the tourists are solicited and assembled by the tour operator, and in both cases the essential question is whether the tourists were diverted from the scheduled traffic.

[22] *National Bus Traffic Assn.* v. *United States*, 143 F.Supp. 689 (D.N.J. 1956), aff'd 352 U.S. 1020.

[23] Id. at pp. 696-7.

> the motor bus seems unimportant; nor does it seem a weighty circumstance that Tauck itself forms the group and not some outside individual, such, for example, as a ski instructor at a ski resort. The important thing is that the Tauck group is a cohesive whole interested in a tour for pleasure, and not in mere transportation."

In its most recent decision, *Greyhound Corp.* v. *Edwards*,[25] the Interstate Commerce Commission again reaffirmed its ruling in *Tauck*. This time, three variations of inclusive tour charters were brought under scrutiny. In one, a travel agent chartered buses to carry passengers from Erie to Cleveland and back the same day, for shopping tours. The only non-transportation element was a luncheon ticket which entitled the passenger to a 75-cent discount at a Cleveland restaurant. The Commission held this type of charter unlawful on the ground that it was too much like straight transportation.[26]

The second type of charter involved hockey excursions. The travel agent offered a charter tour from Erie to Buffalo, featuring a reserved seat at the rink, and a dinner. The Commission approved this type of charter, on the ground that:[27]

> "Unlike the defendant's shopping tours, his hockey excursions, because of the significant nontransportation features involved, would not be attractive to persons desiring transportation and having no interest in the advertised purpose of the tour. In other words, it is inconceivable that any significant number or persons desiring round trip transportation between Erie and Buffalo for other purposes would pay for the unexercised privilege of eating with hockey fans and sitting with them at the game."

---

[25] 96 M.C.C. 112 (1964).

[26] Id. at 122.

[27] Id. at 123.

The third type of charter involved bingo games. A travel agent in Milwaukee chartered buses to carry his patrons to bingo games in various towns in Illinois, and back. The price of the bus ticket did not include admission to the games, or meals; however, the travel agent did notify the bingo parlors how many tour patrons to expect so that sufficient food would be available. While conceding that it was a close question (because of the absence of nontransportation elements), the Commission approved this type of charter:[28]

> "In addition to the existence of strong and specific community of interest among the tour patrons, the complainant has failed to show that the operations of the defendants pose any significant threat to the operations of regular-route carriers of passengers. Moreover, the evidence of record suggests that the possibility of any such injury is extremely remote."

The foregoing decisions were affirmed by the full Commission on reconsideration.[29]

It is clear that the ICC has authority to define charter to include certain kinds of ITC. There is no reason why the CAB does not have the same authority, unless Congress took it away. As fully discussed in our main brief, the 1962 Act did not take it away.

4. Respondents' Procedural Contentions Are Without Substance and Should Be Disposed of Here Without a Remand

Respondents argue at some length (Resp. Br. 73-81) that the Board unlawfully deprived them of a hearing. The fact is otherwise. Every substantive contention underlying respondents' present procedural points was carefully considered by the Board (App. 1063a-1076a), after which the Board articulated sound reasons why in its

---

[28] Id. at p. 124.

[29] *Greyhound Corp.* v. *Edwards*, 100 M.C.C. 453, 464 (1966).

view no further hearing was required. The Board noted specifically (App. 1076a-1077a) that "The route carriers have not come forward with any showing that a reopened record would point to a different conclusion from that adopted herein."

There are two short answers, therefore, to what respondents urge under the present heading.

The first is that the adequacy of the present already lengthy record was a matter committed to the Board's informed discretion. The second is that the matters which the Board officially noticed, of which respondents now also complain (Resp. Br. 77-79), were never sought to be rebutted by them before the Board. Accordingly, they cannot now seek a rehearing on that issue in the courts.

A more extended answer to the trunk lines' procedural objection, fully buttressed by pertinent authorities, will be found at CAB Br. 30-35.

Because the procedural contentions made by the scheduled carriers are so obviously lacking in substance, we urge the Court to dispose of them here, in preference to remanding them for later resolution.

Such a course would have the result, highly desirable as a matter of judicial administration, of terminating the present lengthy proceedings, which have been before the Board and before the courts for almost eight years.

And there are sore practical reasons why the present long standing controversy should at last be brought to a conclusion. As matters now stand, with the statutory word "charter" defined one way by one Circuit in respect of domestic charters, and another way by another Circuit in its application to foreign charters, the planning and marketing of ITCs is being seriously hindered pending a final resolution of the conflict by this Court.

As already pointed out (Supp. Br. 28), the ITC authority is temporary only; the Transatlantic certificates ex-

tend only to April 18, 1969, all other international authority to November 26, 1971. Thus, as a realistic matter, remanding these cases for the determination of the procedural issues would indeed involve what Mr. Justice Cardozo once characterized as "postponement to the Greek Kalends." [30]

CONCLUSION

For the foregoing reasons the judgment of the court below should be reversed.

Respectfully submitted,

CHARLES A. HOBBS,
Counsel for Petitioner,
The American Society of Travel Agents
1616 H Street, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
GLEN A. WILKINSON
PAUL S. QUINN
Of Counsel

April 25, 1968

[30] *Matter of People (Russian Reinsurance Co.)*, 255 N.Y. 415, 422; 175 N.E. 114, 116 (1931).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 800 and 969

WORLD AIRWAYS, INC., ET AL., *Petitioners*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

---

PETITION FOR REHEARING

WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRWAYS, INC., SATURN AIRWAYS, INC., CAPITOL INTERNATIONAL AIRWAYS, INC., AMERICAN FLYERS AIRLINE CORP., PURDUE AERONAUTICS CORP., and AMERICAN SOCIETY OF TRAVEL AGENTS, INC., petitioners in the above-entitled consolidated causes, respectfully pray the Court to grant a rehearing.

I

Affirmance of the judgment herein by an equally divided Court, while binding upon the parties in this controversy if left undisturbed, is of course not an authoritative determination for other cases. E.g., *United States* v. *Pink*, 315 U.S. 203, 216; *Hertz* v. *Woodman*, 218 U.S. 203, 213-214. Consequently it continues an existing conflict between circuits that will predictably soon be resubmitted here and that Congress is far from certain to resolve legislatively in the immediate future.

First. There are now pending in the Second Circuit two other proceedings that raise once again the question whether the term "charter trips in air transportation" (§ 101(33) of the Federal Aviation Act; 49 U.S.C. § 1301(33); Pet. Br. 59) is broad enough to encompass inclusive tour charters. *Trans World Airlines et al.* v. *Civil Aeronautics Board*, Nos. 31901 and 31902. The Board has moved in those cases for the entry of adverse judgments and for a stay of mandate, representing that the Solicitor General will then seek certiorari.

The pending *Trans World Airlines* cases and the earlier District of Columbia Circuit case all involved domestic inclusive tour charters, while the present litigation concerns international inclusive tour charters; but, as all parties are agreed, the domestic as well as the international situations turn on the interpretation of precisely the same statutory provision.*

---

* Indeed, *non constat* the ruling below (1129a-1131a), the present case involves a classic example of collateral estoppel under the rule of, e.g., *Partmar Corp.* v. *Paramount Theatres Corp.*, 347 U.S. 89.

Second. Immediately following the decision herein, bills were introduced in both branches of Congress to overcome the effect of this Court's affirmance without opinion.

S. 3566 and H.R. 17685, 90th Cong., 2d sess., introduced on May 29 and June 5, 1968, respectively, would specifically authorize the Board to validate inclusive tour trips of the kind held valid by the District of Columbia Circuit in *American Airlines* v. *CAB,* 365 F. 2d 939, but rejected by the Second Circuit (and by this Court on equal division) in the present case.

If either of these bills were enacted, inclusive tour charters would be validated, and the present judicial conflict would be resolved—as indeed it would be if Congress were to enact legislation directed in the opposite direction, specifically forbidding such charters.

But neither the present litigants nor this Court can have assurance that any legislation settling the problem will be promptly enacted. Hearings on S. 3566 were scheduled for June 12, 1968, but no House hearings had been set when this petition went to press. Consequently the present conflict of circuits will continue as long as this Court remains equally divided over the scope of administrative flexibility and discretion open to the Civil Aeronautics Board in its implementation and regulation of the statutory grant that authorizes "charter trips in air transportation."

Moreover, if the existing conflict is ultimately resolved favorably to the supplemental carriers in the domestic inclusive tour cases now pending in the Second Circuit, but the present affirmance in the international inclusive tour cases is permitted to become

final before legislation is enacted, then the latter issues must once again be heard by the Board in a certificate proceeding and approved by the President—a process that will undoubtedly and indeed inevitably consume several years.

II

We venture to suggest that the basic issue of statutory construction herein is actually less opaque than it may have appeared, particularly since it can be expounded in virtually syllogistic terms:

1. In the course of the Committee hearings, the trunk lines (respondents here) objected to a legislative definition of "charter," while the supplementals (the present petitioners in No. 800) urged that the Congress define "charter." Full references are at Pet. Br. 6-10.

2. The Senate version of the bill that became the Act of July 10, 1962, P. L. 87-528, 76 Stat. 143, the measure now in question, acceded to the supplementals' urging and included a legislative definition of "charter." Full references here are at Pet. Br. 10-13. The House version, however, reflected the preferences of the trunk lines, the House Committee concluding "that under the circumstances, authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." (Pet. Br. 13-14).

3. Consequently, when the Senate receded in the Conference Report (Pet. Br. 15-17), it was receding, not from a grant of authority to the Board to define

"charter" as including tours—up to the time of final enactment in 1962, as the committee hearings show, there was never the slightest doubt anywhere of the Board's authority in that regard. To the contrary, the Senate receded from its legislative definition of "charter," and concurred with the House view that "authority to define charter services should be left, as at present, with the Board."

Once the earlier legislative history is thus objectively read, that is the only admissible meaning of the Conference Report.

4. What was thereafter said when the Conference Report was under consideration, comments at variance alike with that Report, with its background, and with what the Senate Chairman of the Conference Committee told the Senate (Pet. Br. 17-18), cannot, we submit, serve to modify the Conference Report—essentially because unequivocal conference reports are entitled, at the very least, to the protection of a parol evidence rule. See *United States* v. *O'Brien,* Nos. 232 and 233, this Term, decided May 27, 1968, pp. 17-18 of slip opinion.

III

As matters now stand, the air transportation industry faces a continuing conflict of circuits without any assurance of speedy legislative resolution: Inclusive tour charters are valid in domestic travel but unauthorized in international travel, a distinction quite without the slightest statutory support. This Court will once more be squarely faced with the precise conflict of circuits once the pending *Trans World Airlines* cases are decided by the Second Circuit in accord with that

tribunal's earlier ruling below in the present case, as the Board has requested in order to hasten ultimate determination. Meanwhile, foreign supplemental air carriers are able to operate inclusive tour charters in this country (Pet. Br. 53-54), while American supplemental carriers are precluded from operating similar charters abroad. And, while the present uncertainty continues, several thousand American citizens who have made vacation plans and have purchased tickets from tour operators on the strength of existing Statements of Authorization will be gravely inconvenienced.

All of these considerations unite in urging that next Fall, with nearly a full Term available for further study and deliberation, this Court should make another effort to resolve the present impasse.

Accordingly, we respectfully submit that this petition for rehearing should be granted.

JERROLD SCOUTT, JR.,
888 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioners World Airways, Inc., and Purdue Aeronautics Corp.,

CLAYTON L. BURWELL,
1815 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Trans International Airlines, Inc.,

LEONARD N. BEBCHICK,
919 - 18th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Saturn Airways, Inc.,

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Ave., N. W.,
Washington, D. C. 20006,
Of Counsel for all Petitioners.

GEORGE BERKOWITZ,
233 Broadway,
New York, N. Y. 10007,
Counsel for Petitioner Capitol International Airways, Inc.,

STEPHEN D. POTTS,
910 - 17th Street, N. W.
Washington, D. C. 20006,
Counsel for Petitioner American Flyers Airline Corp.,

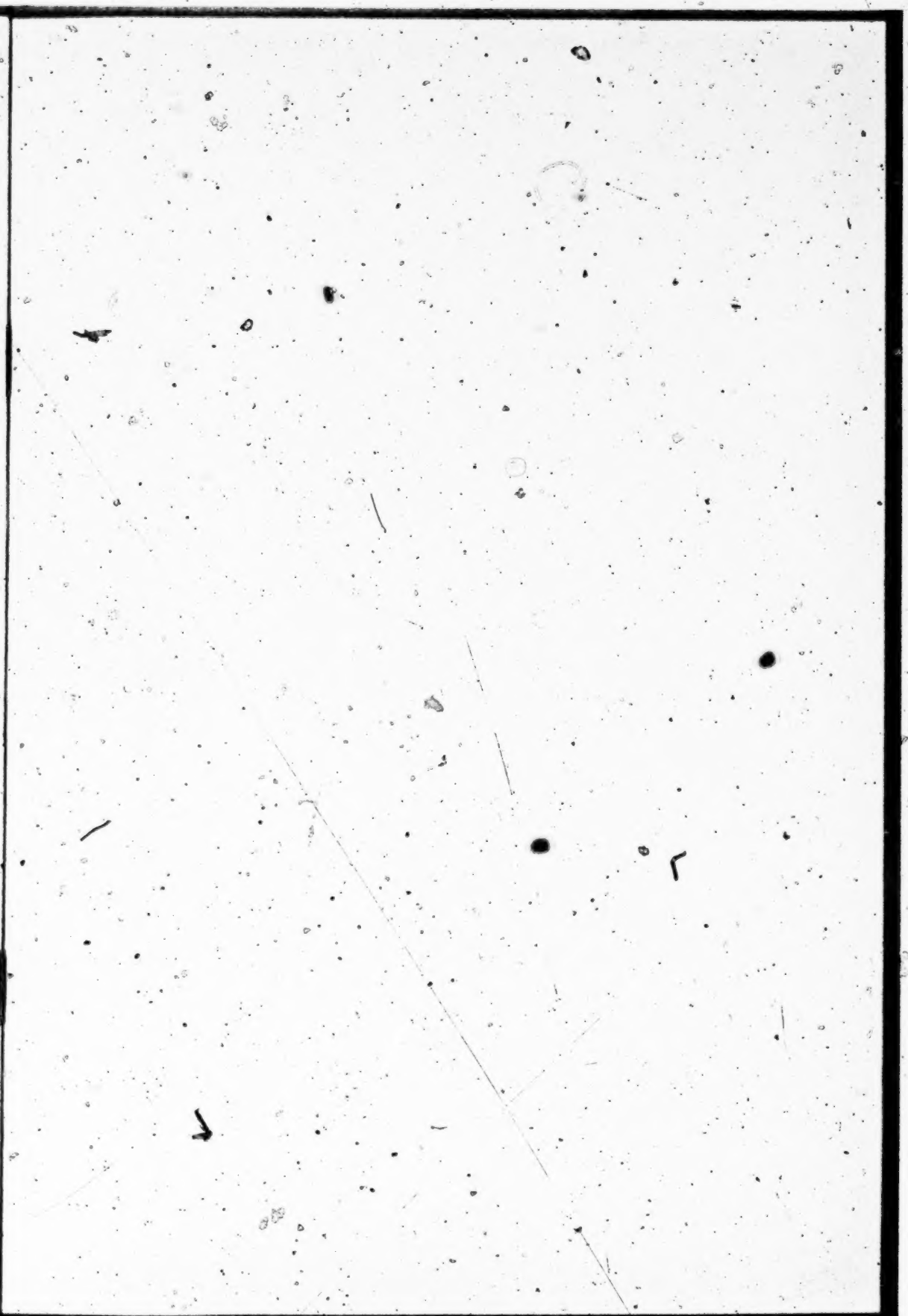
CHARLES A. HOBBS,
1616 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Society of Travel Agents, Inc.

Certificate of Counsel

I certify that this petition is presented in good faith and not for delay.

FREDERICK BERNAYS WIENER

JUNE 1968.



LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 18 1968
JOHN F. DAVIS, CLERK

Nos. 800 and 969

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

WORLD AIRWAYS, INC., ET AL., *Petitioners*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

SUPPLEMENT TO PETITION FOR REHEARING

JEROLD SCOUTT, JR.,
888 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioners World Airways, Inc., and Purdue Aeronautics Corp.,

CLAYTON L. BURWELL,
1815 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Trans International Airlines, Inc.,

LEONARD N. BEBCHICK,
919 - 18th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Saturn Airways, Inc.,

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Ave., N. W.,
Washington, D. C. 20006,
Of Counsel for all Petitioners.

GEORGE BERKOWITZ,
233 Broadway,
New York, N. Y. 10007,
Counsel for Petitioner Capitol International Airways, Inc.,

STEPHEN D. POTTS,
910 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Flyers Airline Corp.,

CHARLES A. HOBBS,
1616 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Society of Travel Agents, Inc.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 800 and 969

WORLD AIRWAYS, INC., ET AL., *Petitioners*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

---

SUPPLEMENT TO PETITION FOR REHEARING

As indicated at p. 3 of our Petition for Rehearing, hearings on S. 3566, 90th Cong., 2d sess., "A bill to amend the Federal Aviation Act of 1958 with respect to the definition of 'supplemental air transportation,' and for other purposes" (see also 114 Cong. Rec. S6674-S6676), commenced before the Aviation Subcommittee of the Senate Committee on Commerce on June 12, 1968.

What was said at those hearings by Chairman Monroney so strongly supports the view of the present petitioners as well as that of the Civil Aeronautics Board, that we deem it appropriate to bring his remarks to the attention of the Court in connection with our Petition for Rehearing.

Chairman Monroney said on June 12, 1968 (pp. 46-48 of typewritten transcript):

> "May I further explain the history of the bill?
>
> "You will recall that the supplementals were unfinanced and underequipped at the time. We had delays and no shows, not of the passengers but of the planes, and the Aviation Subcommittee felt it was time to regularize these and bring about the safety records that we enjoy in other branches of aviation. We felt it could only be done by requiring stringent inspection and stringent regulations as to their safety of all kinds.
>
> "When the bill passed the Senate we were very proud of the results of the bill. It provided that they could sell charter only and that they were also allowed to have inclusive tour. We felt it was necessary to distinguish this type of service from the other types of service.
>
> "It was fought rather bitterly in the Senate by the schedule airlines and the Committee's position prevailed and they included that in the bill that passed the Senate. It wangled for weeks against a strong lobby in the other body and finally it was a question of having adjustment in the language or no bill at all.
>
> "In order to arrive at a bill the language of inclusive tours was stricken out on the theory we would leave this as we did the certification of these to the Civil Aeronautics Board. It was not deleted as a means of eleminating the all-inclusive

tour because I was head of the conference committee of the Senate but it was the matter of having the lines more clearly defined as to what the Board would do in the all-inclusive tour field by definitions and the bill was agreed to in both Houses.

"Unfortunately on the Floor of the House the other body, a certain debate was held including their interpretation of the all-inclusive tour being stricken out and not a matter that was to be left to the Board.

"The Board, when we passed it, did include the all-inclusive tours in their regulations and worked well until this court test which I think you can describe as a draw and it is up to us to clarify this language and to say definitely in law that the Board is to be the regulator of the—not only the certification but as to the extent and operation of the all-inclusive tour.

"So we are merely clarifying the situation that was subject to some misinterpretation. As to the results of the conference. But this bill supports the bill as it was passed by the Senate and we trust we can get it through to restore what we had originally intended to do which has resulted in a fantastic growth of tourism and a fantastic safety record."

On the following day, June 13, Chairman Monroney said (p. 175):

"I would be less than fair if I didn't say that having been Chairman of the Conference Committee that tried to resolve the differences between the two Houses, that contrary to the statement of the members of the House at the time the bill was passed and some of our own colleagues, it was not prohibited from the business of all inclusive tours. This was the stumbling block.

> "The Senate, in order to get a bill agreed to strike the specific language, but we didn't yield on the point and never intended to, that this would go out. The bill was designed and it was left to the CAB to decide that authority."

And again at p. 213:

> "All we are trying here to do is to do what the Senate itself insisted on doing when the bill was passed, and what we insisted on doing in the conference, which I insisted we were doing when we arrived at the floor. * * * "

It would be inappropriate to argue the weight of the foregoing comments now. But since those views of the Chairman of the Senate conferees plainly support our view that the court below erred in the present case, we submit them as an addition to our Petition for Rehearing.

Respectfully submitted.

JEROLD SCOUTT, JR.,
888 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioners World Airways, Inc., and Purdue Aeronautics Corp.,

CLAYTON L. BURWELL,
1815 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Trans International Airlines, Inc.,

LEONARD N. BEBCHICK,
919 - 18th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Saturn Airways, Inc.,

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Ave., N. W.,
Washington, D. C. 20006,
Of Counsel for all Petitioners.

GEORGE BERKOWITZ,
233 Broadway,
New York, N. Y. 10007,
Counsel for Petitioner Capitol International Airways, Inc.,

STEPHEN D. POTTS,
910 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Flyers Airline Corp.,

CHARLES A. HOBBS,
1616 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Society of Travel Agents, Inc.

JUNE 1968.

MOTION FILED
LIBRARY
SUPREME COURT, U. S.
OCT 18 1968

Nos. 800 and 969, Oct. T. 1967

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

WORLD AIRWAYS, INC., ET AL., *Petitioners*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION TO SUPPLEMENT PETITION FOR REHEARING

JEROLD SCOUTT, JR.,
888 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioners World Airways, Inc., and Purdue Aeronautics Corp.,

CLAYTON L. BURWELL,
1815 H Street, N. W.,
Washington, D. C. 20006,
Coiunsel for Petitioner Trans International Airlines, Inc.,

LEONARD N. BEBCHICK,
919 - 18th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Saturn Airways, Inc.,

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Ave., N.W.,
Washington, D. C. 20006,
Of Counsel for all Petitioners.

GEORGE BERKOWITZ,
233 Broadway,
New York, N. Y. 10007,
Counsel for Petitioner Capitol International Airways, Inc.,

STEPHEN D. POTTS,
910 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Flyers Airline Corp.,

CHARLES A. HOBBS,
1616 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Society of Travel Agents, Inc.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

Nos. 800 and 969, Oct. T. 1967

WORLD AIRWAYS, INC., ET AL., *Petitioners*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

---

MOTION TO SUPPLEMENT PETITION FOR REHEARING

WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRWAYS, INC., SATURN AIRWAYS, INC., CAPITOL INTERNATIONAL AIRWAYS, INC., AMERICAN FLYERS AIRLINE CORP., PURDUE AERONAUTICS CORP., and AMERICAN SOCIETY OF TRAVEL AGENTS, INC., petitioners in the above-entitled consolidated causes, move for leave to supplement their

petition for rehearing, which was timely filed and is awaiting disposition, in order to bring to the Court's attention legislation of a controlling character that was enacted subsequent to the filing of such petition.

First. Public Law 90-514, approved September 26, 1968, set forth in the appendix to this motion, disposes of the basic issues in this litigation.

Section 1 thereof redefined "charter trips" in the statute to include "inclusive tour charter trips."

Section 2 thereof "validated, ratified, and continued in effect according to their terms" the certificates of public convenience and necessity and statements of authorizations here concerned, "notwithstanding any contrary determinations by any court that the [Civil Aeronautics] Board lacked power to authorize the performance of inclusive tour charter trips in air transportation."

Thus the substantive questions in controversy between the parties to the present consolidated cases have been legislatively determined in favor of the several petitioners.

Second. Respondents' procedural contentions, which the Second Circuit did not reach (1143a), were renewed in this Court (Resp. Br. 73-81).

For reasons already fully set forth by the Civil Aeronautics Board (CAB Br., No. 946, pp. 30-35), we are convinced that those contentions were wholly lacking in substance when made. Moreover, it is also clear that they have even less weight now, by reason of the validation and ratification effected by Section 2 of Public Law 90-514. None the less, we think that it would be

more appropriate for these questions to be considered in the first instance by the original reviewing tribunal.

Accordingly, we believe that, in the face of the new legislation, the proper course for this Court would be to grant this motion to supplement; to grant the petition for rehearing; to vacate the previous judgment that was entered on May 27, 1968, following affirmance by an equally divided Court; and then to enter a new judgment vacating the judgment below and remanding the case to the Court of Appeals for disposition in the light of the Act of September 26, 1968, Public Law 90-514.

Respectfully submitted.

JERROLD SCOUTT, JR.,
888 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioners World Airways, Inc., and Purdue Aeronautics Corp.,

CLAYTON L. BURWELL,
1815 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Trans International Airlines, Inc.,

LEONARD N. BEBCHICK,
919 - 18th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner Saturn Airways, Inc.,

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Ave., N.W.,
Washington, D. C. 20006,
Of Counsel for all Petitioners.

GEORGE BERKOWITZ,
233 Broadway,
New York, N. Y. 10007,
Counsel for Petitioner Capitol International Airways, Inc.,

STEPHEN D. POTTS,
910 - 17th Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Flyers Airline Corp.,

CHARLES A. HOBBS,
1616 H Street, N. W.,
Washington, D. C. 20006,
Counsel for Petitioner American Society of Travel Agents, Inc.

OCTOBER 1968.

APPENDIX

Public Law 90-514
90th Congress, S. 3566
September 26, 1968

An Act

To amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation", and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (33) of section 101 of the Federal Aviation Act of 1958 is amended to read as follows:

Federal Aviation Act of 1958, amendment. 76 Stat. 143. 49 USC 1301. "Supplemental air transportation."

"(33) 'Supplemental air transportation' means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales."

49 USC 1371.

SEC. 2. Certificates of public convenience and necessity for supplemental air transportation and statements of authorizations, issued by the Civil Aeronautics Board, are hereby validated, ratified, and continued in effect according to their terms, notwithstanding any contrary determinations by any court that the Board lacked power to authorize the performance of inclusive tour charter trips in air transportation.

SEC. 3. Section 401(e)(6) of the Federal Aviation Act of 1958 is amended to read as follows:

76 Stat. 144.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter trips (including inclusive tour charter trips) or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board."

Approved September 26, 1968.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1639 accompanying H. R. 17685 (Comm. on Interstate & Foreign Commerce).
SENATE REPORT No. 1354 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 114 (1968):
July 9-11: Considered and passed Senate.
Aug. 2: Considered and passed House, amended, in lieu of H. R. 17685.
Sept. 13: Senate agreed to House amendments.

LIBRARY
SUPREME COURT, U. S.

Nos. 800 and 969 Oct. T. 1967

FILED
OCT 30 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

WORLD AIRWAYS, INC., *et al.*,

Petitioners,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., *et al.*

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,

Petitioner,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONSE TO MOTION TO SUPPLEMENT PETITION FOR REHEARING

EDWARD R. NEAHER
25 Broadway
New York, New York 10004
Counsel for Respondents

CARL S. ROWE
GERTRUDE S. ROSENTHAL
Of Counsel

October 1968

Nos. 800 and 969 Oct. T. 1967

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

WORLD AIRWAYS, INC., *et al.*,

Petitioners,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., *et al.*

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,

Petitioner,

—v.—

PAN AMERICAN WORLD AIRWAYS, INC., *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONSE TO MOTION TO SUPPLEMENT PETITION FOR REHEARING

Respondents, Pan American World Airways, Inc., *et al.*, oppose the motion of petitioners, World Airways, Inc., *et al.*, for leave to supplement their petition for rehearing filed with the Court in June 1968.

What petitioners really seek by this motion is the vacating of the judgments of this Court and of the Court of Appeals as a step, in effect, toward seeking an ultimate

reversal of the judgment below sustaining respondents' position in the review proceeding. Respondents submit there is no valid basis and no necessity for the relief petitioners now seek. Congress itself in the Act of September 26, 1968 (Public Law 90-514*), relied upon by petitioners in their motion, granted them relief from the effect of these judgments by validating, ratifying and continuing in effect their certificates "notwithstanding any contrary determinations by any court" (*ibid.*, Sec. 2).

Thus the issues sought to be raised by petitioners' petition for rehearing, their supplement thereto and this present motion to supplement these papers are now moot by reason of the September 1968 Congressional enactment, and there is no longer any need for either the petition for rehearing or this motion.

Furthermore, petitioners' motion would lead to one and possibly two undesirable results. First, a judgment adjudicating a case which construed one statute (Public Law 87-528, the "1962 Act") would be set aside by reason of the subsequent enactment of another and different statute, the 1968 Act. The courts' judgments with respect to the 1962 Act were sound when rendered. There is no dispute that the 1968 Act was designed to amend the 1962 Act so as to meet the objections raised by respondents and vindicated by the judgments now sought to be vacated. No subsequent statute can properly be applied for the purpose of redetermining at this juncture the correctness of an earlier decision which interpreted a statute that has been substantially amended in the very area at issue, as was the case here.

---

* Reprinted in full as Appendix to Motion to Supplement Petition for Rehearing, following page 3.

Second, the judgments now sought to be vacated sustained respondents' review proceeding in the Court of Appeals, which was prosecuted at substantial expense to them. That court taxed costs in favor of respondents in the amount of $10,952.86, which have not yet been collected because of the stay of the mandate of this Court pending action on petitioners' petition for rehearing filed in June 1968. The vacating of this Court's judgment of May 27, 1968, as sought in the present motion, may have the effect of preventing recovery of costs justifiably awarded to respondents by the Court of Appeals.

Accordingly, we submit that petitioners have already obtained from Congress the relief they are seeking by their petition for rehearing and this motion; that there is no need for this Court to take any further action with respect to the prior judgments in this case; and that the relief sought may substantially prejudice respondents. The motion to supplement the petition for rehearing should therefore be denied.

Dated: New York, New York
October 1968

Respectfully submitted,

EDWARD R. NEAHER
25 Broadway
New York, New York 10004
Counsel for Respondents

CARL S. ROWE
GERTRUDE S. ROSENTHAL
Of Counsel

CERTIFICATE OF SERVICE

I, GERTRUDE S. ROSENTHAL, hereby certify that:

1. I am a member of the Bar of this Court.

2. I have this day served the attached Response to Motion to Supplement Petition for Rehearing by depositing true copies thereof in a Letter Box maintained and exclusively controlled by the United States at 25 Broadway, New York, New York 10004, with first class postage prepaid, addressed to the following counsel of record in this action at the addresses designated by them, as follows:

Erwin N. Griswold, Esq.
Solicitor General
United States Department of Justice
Washington, D. C. 20530

Warren Sharfman, Esq.
Associate General Counsel
Civil Aeronautics Board
Washington, D. C. 20428

Jerrold Scoutt, Jr., Esq.
888—17th Street, N.W.
Washington, D. C. 20006

Clayton L. Burwell, Esq.
1815 H Street, N.W.
Washington, D. C. 20006

Leonard N. Bebchick, Esq.
919—18th Street, N.W.
Washington, D. C. 20006

Frederick Bernays Wiener, Esq.
1750 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

George Berkowitz, Esq.
233 Broadway
New York, New York 10007

Stephen D. Potts, Esq.
910—17th Street, N.W.
Washington, D. C. 20006

Charles A. Hobbs, Esq.
1616 H Street, N.W.
Washington, D. C. 20006

GERTRUDE S. ROSENTHAL

SUPREME COURT OF THE UNITED STATES

Nos. 800, 946, AND 969.—OCTOBER TERM, 1967.

World Airways, Inc. et al., Petitioners, 800 v. Pan American World Airways, Inc., et al.	On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.
Civil Aeronautics Board, Petitioner, 946 v. Pan American World Airways, Inc., et al.	
American Society of Travel Agents, Inc., Petitioner, 969 v. Pan American World Airways, Inc., et al.	

[May 27, 1968.]

PER CURIAM.

The judgment of the United States Court of Appeals for the Second Circuit is affirmed by an equally divided Court.

MR. JUSTICE MARSHALL took no part in the consideration or decision of these cases.